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Criminal accountability of United Nations officials and experts on mission

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to paragraph 26 of General Assembly resolution 71/134. Section II contains information received from Member States since 2007 regarding the establishment of jurisdiction over their nationals whenever they serve as United Nations officials or experts on mission.

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I. Introduction

1. In paragraph 26 of its resolution 71/134, the General Assembly requested the Secretary-General to prepare and keep updated a report containing a compilation and a summary table of national provisions, based on information received from Member States since 2007, regarding the establishment of jurisdiction over their nationals whenever they serve as United Nations officials or experts on mission, in relation to crimes as known in their existing national criminal laws, particularly those of a serious nature. Since the adoption of resolution 62/63, information has been requested from Member States on their provisions establishing jurisdiction over crimes, particularly those of a serious nature, as known in their existing national criminal laws, committed by their nationals while serving as United Nations officials or experts on mission. Paragraph 9 of resolution 71/134 contains the most recent such provision.

2. Between 6 December 2007 and 20 July 2016, 114 submissions from 57 Member States were received.[1] Seven submissions were received between 21 July 2016 and 1 June 2017 from among the 57 Member States that had submitted previously. A total of 121 written submissions from 57 Member States[2] have therefore been received. Additionally, by 1 June 2017, from among the 57 Member States, 12 responses had been received to the questionnaire prepared in 2016 by the Secretariat for consideration by Member States in submitting information to assist in the collation of information.[3]

3. The present report presents a summary table of the information received from Member States since 2007 regarding their national provisions. The table utilizes the framework set out in the questionnaire to disaggregate the information provided. Accordingly, the numbering of entries in the table follows that of the questionnaire. Limitations or exceptions to the responses from Member States included in the table are set out in the accompanying footnote. The information includes, to the extent provided by Member States, at the material time: (a) the available forms of jurisdiction through which criminal law is applicable to nationals while serving as United Nations officials or experts on mission; (b) the categories of national provisions which establish jurisdiction *ratione personae* over crimes committed extraterritorially by nationals while serving as United Nations officials and experts on mission; (c) the categories of national provisions which establish jurisdiction *ratione materiae* over crimes committed extraterritorially by nationals while serving as United Nations officials and experts on mission; (d) any applicable prerequisites to the exercise of extraterritorial jurisdiction for these nationals; (e) the legal basis for the application of rules of immunity to United Nations officials or experts on mission; (f) the extent to which military and/or civilian law is applicable to crimes committed by United Nations officials or experts on mission.

4. A compilation of the full submissions that have been received with respect to the establishment of jurisdiction over their nationals whenever they serve as United Nations officials or experts on mission can be found on the website of the Sixth Committee under the item entitled "Criminal accountability of United Nations officials and experts on mission" (available from http://www.un.org/en/ga/sixth).

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[1] These figures represent a slight adjustment to the totals set out in paragraph 25 of resolution 71/134.

[2] The Slovak Republic provided information in response to the resolution but not in relation to the issue of jurisdiction.

[3] For the questionnaire, see report of the Secretary-General on criminal accountability of United Nations officials and experts on mission (A/71/167, annex I, and Corr.1).

II. Summary table of national provisions

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
Argentina	(a) Territoriality (d) Effects doctrine (g) Other[1]	(e) Specific legislation for particular categories of persons: (i) Public officials[2]	(a) General[3]		(a) 1946 Convention[4]	
Australia	(a) Territoriality (b) Nationality	(b) Over nationals[5] (e) Specific legislation for particular categories of persons: (i) Military United Nations officials and experts on mission (ii) Police United Nations officials and experts on mission (iii) Civilian United Nations officials and experts on mission	(a) General (h) Limited to specific list of crimes[6]	(I) (c) Any other agreement[7] (II) (e) Permission to prosecute required by specific government official[8,9]	(a) 1946 Convention[4] (b) Specific agreement[10] with the United Nations (c) Specific agreement with the host State	(c) Potential application of civilian law/courts
Austria	(a) Territoriality (b) Nationality (c) Passive personality[11]	(b) Over nationals (d) Over foreign nationals[12] (e) Specific legislation for	(a) General[14] (b) Limited to international treaty obligations (d) Limited to	(II) (b) Double criminality[16] (c) Presence of the offender in		

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
	(d) Effects doctrine (f) Universality	particular categories of persons: (iv) Public officials[13]	"international crimes"[15] (f) Limited to crimes affecting "essential interest(s) of the State"	territory of forum State[17]		
Belarus	(a) Territoriality (b) Nationality	(b) Over nationals (c) Over stateless persons[18]	(a) General[19]	(I) (c) Any other agreement (d) National law (II) (b) Double criminality[20] (c) Presence of the offender in territory of forum State	(a) 1946 Convention[4] (c) Specific agreement with the host State	
Belgium	(a) Territoriality (b) Nationality (c) Passive personality[21] (e) Protective principle[22] (f) Universality[23]	(b) Over nationals (c) Over stateless persons (d) Over foreign nationals[24] (e) Specific legislation for particular categories of persons: (iv) Public officials	(a) General	(I) (d) National law[26] (II) (b) Double criminality[27] (c) Presence of the offender in territory of forum State[28] (d) *Ne bis in idem* (e) Permission to	(a) 1946 Convention[4] (b) Specific agreement with the United Nations (c) Specific agreement with the host State (d) Other general privileges and immunities applicable	(c) Potential application of civilian law/courts

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
		(v) Other[25]		prosecute required by specific government official[29]		
Bolivia(Plurinational State of)	(a) Territoriality[30] (b) Nationality (d) Effects doctrine (e) Protective principle	(b) Over nationals (d) Over foreign nationals (e) Specific legislation for particular categories of persons: (iv) Public officials	(a) General[31] (b) Limited to international treaty obligations[32] (g) Limited to crimes affecting public security[32] (h) Limited to specific list of crimes[32]	(II) (c) Presence of the offender in territory of forum State[33] (d) *Ne bis in idem*[34]	(a) 1946 Convention[4] (b) Specific agreement with the United Nations	
Bosnia and Herzegovina	(a) Territoriality (b) Nationality (e) Protective principle	(b) Over nationals (c) Over stateless persons[35] (d) Over foreign nationals[35] (e) Specific legislation for particular categories of persons: (v) Other[36]	(a) General[37] (b) Limited to international treaty obligations[38] (h) Limited to specific list of crimes[39]	(I) (d) National law (II) (b) Double criminality[40] (c) Presence of the offender in territory of forum State[41]	(a) 1946 Convention[4] (c) Specific agreement with the host State[42]	(c) Potential application of civilian law/courts
Brazil	(b) Nationality	(b) Over nationals	(a) General[43]			
Bulgaria	(a) Territoriality (b) Nationality	(b) Over nationals (d) Over foreign nationals[45]	(a) General[46]		(a) 1946 Convention[4]	

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
	(d) Effects doctrine[44]					
Canada	(a) Territoriality (b) Nationality[47] (c) Passive personality[48] (d) Effects doctrine (e) Protective principle (f) Universality[49] (g) Other[50]	(b) Over nationals (c) Over stateless persons[51] (d) Over foreign nationals[52] (e) Specific legislation for particular categories of persons: (i) Military United Nations officials and experts on mission (ii) Police United Nations officials and experts on mission (iii) Civilian United Nations officials and experts on mission (iv) Public officials	(a) General[53] (b) Limited to international treaty obligations[54] (d) Limited to "international crimes"[55] (h) Limited to specific list of crimes[56]	(II) (b) Double criminality[56] (c) Presence of the offender in territory of forum State (d) *Ne bis in idem* (e) Permission to prosecute required by specific government official[57]		(c) Potential application of civilian law/courts
Chile	(a) Territoriality (b) Nationality[58] (c) Passive personality[59]	(b) Over nationals (d) Over foreign nationals[60]	(b) Limited to international treaty obligations (h) Limited to specific list of crimes			

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
China	(a) Territoriality (b) Nationality	(b) Over nationals (e) Specific legislation for particular categories of persons: (iv) Public officials	(e) Limited to crimes accompanied with minimum imprisonment term[61]		(a) 1946 Convention[4]	
Colombia	(a) Territoriality (b) Nationality (d) Effects doctrine (e) Protective principle	(b) Over nationals (d) Over foreign nationals[62] (e) Specific legislation for particular categories of persons: (iv) Public officials (v) Other[63]	(b) Limited to international treaty obligations (d) Limited to "international crimes" (e) Limited to crimes accompanied with minimum imprisonment term[64] (f) Limited to crimes affecting "essential interest(s) of the State"[65]	(II) (c) Presence of the offender in territory of forum State[66] (d) *Ne bis in idem*[67] (e) Permission to prosecute required by specific government official[68]		
Croatia	(b) Nationality (f) Universality	(b) Over nationals (d) Over foreign nationals[69] (e) Specific legislation for particular categories of persons:		(I) (c) Any other agreement (II) (b) Double criminality[71]		

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
		(v) Other[70]				
Cyprus	(b) Nationality (e) Protective principle (f) Universality[72]	(b) Over nationals (d) Over foreign nationals[73]	(b) Limited to international treaty obligations (e) Limited to crimes accompanied with minimum imprisonment term[74]	(II) (b) Double criminality[75]	(d) Other general privileges and immunities applicable	
Czechia	(a) Territoriality (b) Nationality[76] (c) Passive personality[77] (e) Protective principle (f) Universality (g) Other[78]	(b) Over nationals (c) Over stateless persons (d) Over foreign nationals	(a) General[79] (b) Limited to international treaty obligations[80] (d) Limited to "international crimes"[80] (f) Limited to crimes affecting "essential interest(s) of the State"[80] (g) Limited to crimes affecting public security[80] (h) Limited to specific list of crimes[80]	(I) (c) Any other agreement (II) (b) Double criminality[81] (c) Presence of the offender in territory of forum State[82] (d) *Ne bis in idem*[82]	(a) 1946 Convention[4] (c) Specific agreement with the host State	(c) Potential application of civilian law/courts
Egypt	(b) Nationality	(b) Over nationals	(i) Other limitations to the application *ratione*	(c) Presence of the offender in territory of forum	(a) 1946 Convention[4]	

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
			materiae of domestic law[83]	State (d) *Ne bis in idem*		
El Salvador	(a) Territoriality (b) Nationality (c) Passive personality (f) Universality	(b) Over nationals (d) Over foreign nationals[84] (e) Specific legislation for particular categories of persons: (v) Other[85]	(a) General[86] (b) Limited to international treaty obligations	(II) (b) Double criminality (d) *Ne bis in idem*[87]	(a) 1946 Convention[4] (c) Specific agreement with the host State	(c) Potential application of civilian law/courts
Estonia	(b) Nationality (c) Passive personality (f) Universality	(b) Over nationals (d) Over foreign nationals[88] (e) Specific legislation for particular categories of persons: (v) Other[89]	(a) General[90] (b) Limited to international treaty obligations (d) Limited to "international crimes"	(II) (b) Double criminality		
Finland	(a) Territoriality[91] (b) Nationality[92] (c) Passive personality[93] (e) Protective principle (f) Universality	(b) Over nationals[94] (c) Over stateless persons (d) Over foreign nationals (e) Specific legislation for particular categories of	(a) General[96] (b) Limited to international treaty obligations (d) Limited to "international crimes" (e) Limited to crimes accompanied with	(II) (b) Double criminality[98] (d) *Ne bis in idem* (e) Permission to prosecute required by specific government official[99]	(a) 1946 Convention[4] (b) Specific agreement with the United Nations (c) Specific agreement with the host State	(c) Potential application of civilian law/courts

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
		persons: (iv) Public officials (v) Other[95]	minimum imprisonment term[97] (h) Limited to specific list of crimes			
Georgia	(b) Nationality[100] (f) Universality	(b) Over nationals (c) Over stateless persons (d) Over foreign nationals[101]	(a) General[102] (d) Limited to "international crimes"[101]	(II) (b) Double criminality[103]		
Germany	(b) Nationality (d) Effects doctrine (e) Protective principle (f) Universality	(b) Over nationals (c) Over stateless persons[104] (d) Over foreign nationals (e) Specific legislation for particular categories of persons: (iv) Public officials	(a) General[105] (d) Limited to "international crimes" (f) Limited to crimes affecting "essential interest(s) of the State" (g) Limited to crimes affecting public security (h) Limited to specific list of crimes	(II) (b) Double criminality[106]		

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
Greece	(a) Territoriality (b) Nationality (c) Passive personality (e) Protective principle (f) Universality	(b) Over nationals (c) Over stateless persons (d) Over foreign nationals[107] (e) Specific legislation for particular categories of persons: (iv) Public officials (v) Other[108]	(b) Limited to international treaty obligations[109] (d) Limited to "international crimes"[109] (h) Limited to specific list of crimes[109] (i) Other limitations to the application *ratione materiae* of domestic law[110]	(II) (b) Double criminality[111] (d) *Ne bis in idem*[112]		(c) Potential application of civilian law/courts
Guatemala	(a) Territoriality[113] (b) Nationality (c) Passive personality[114] (e) Protective principle (f) Universality	(b) Over nationals[115] (e) Specific legislation for particular categories of persons: (iv) Public officials	(b) Limited to international treaty obligations (d) Limited to "international crimes" (f) Limited to crimes affecting "essential interest(s) of the State" (g) Limited to crimes affecting public security (h) Limited to specific list of crimes[116]	(II) (c) Presence of the offender in territory of forum State[114] (d) *Ne bis in idem*[114,117] (e) Permission to prosecute required by specific government official[114]		

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
Guyana	(a) Territoriality (b) Nationality[118]	(b) Over nationals (d) Over foreign nationals	(h) Limited to specific list of crimes	(II) (b) Double criminality	(a) 1946 Convention[4]	
Iraq	(b) Nationality	(b) Over nationals[119] (e) Specific legislation for particular categories of persons: (iv) Public officials	(i) Other limitations to the application *ratione materiae* of domestic law[120]	(I) (c) Any other agreement (II) (b) Double criminality[121] (c) Presence of the offender in territory of forum State[121] (e) Permission to prosecute required by specific government official	(b) Specific agreement with the United Nations (d) Other general privileges and immunities applicable	
Ireland	(a) Territoriality[122] (b) Nationality (c) Passive personality[123] (f) Universality (g) Other[124]	(b) Over nationals[125] (d) Over foreign nationals (e) Specific legislation for particular categories of persons: (v) Other[126]	(h) Limited to specific list of crimes (i) Other limitations to the application ratione materiae of domestic law[127]	(II) (b) Double criminality[128]		(a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission (b) Exclusive use of military courts for military personnel deployed as United Nations officials or experts on mission

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
Italy	(a) Territoriality (b) Nationality (c) Passive personality (e) Protective principle (f) Universality	(b) Over nationals (d) Over foreign nationals[129] (e) Specific legislation for particular categories of persons: (iv) Public officials (v) Other[130]	(a) General[130] (b) Limited to international treaty obligations (d) Limited to "international crimes" (f) Limited to crimes affecting "essential interest(s) of the State" (h) Limited to specific list of crimes[131]	(II) (c) Presence of the offender in territory of forum State[131]		(a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission
Jordan	(b) Nationality	(b) Over nationals[132] (d) Over foreign nationals[133] (e) Specific legislation for particular categories of persons: (iv) Public officials (v) Other[134]	(b) Limited to international treaty obligations (d) Limited to "international crimes" (i) Other limitations to the application ratione materiae of domestic law[135]	(I) (c) Any other agreement (d) National law (II) (d) *Ne bis in idem*[136]	(d) Other general privileges and immunities applicable	(c) Potential application of civilian law/courts
Kenya	(a) Territoriality[137] (b) Nationality	(b) Over nationals				

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
Kuwait	(b) Nationality	(b) Over nationals	(a) General	(II) (b) Double criminality[138] (c) Presence of the offender in territory of forum State[138] (d) *Ne bis in idem*[138]		
Lebanon	(a) Territoriality				(a) 1946 Convention[4] (b) Specific agreement with the United Nations[139]	
Liechtenstein	(b) Nationality	(b) Over nationals	(a) General[140]	(II) (b) Double criminality[141]		
Lithuania	(a) Territoriality[142] (b) Nationality (e) Protective principle (f) Universality	(b) Over nationals[143] (d) Over foreign nationals[144]	(b) Limited to international treaty obligations (d) Limited to "international crimes" (f) Limited to crimes affecting "essential interest(s) of the State" (h) Limited to specific list of	(II) (b) Double criminality[146] (d) *Ne bis in idem*	(d) Other general privileges and immunities applicable	(a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission (b) Exclusive use of military courts for military personnel deployed as United Nations officials or experts on mission

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
			crimes[145]			
Mexico	(b) Nationality (c) Passive personality (d) Effects doctrine(f) Universality	(b) Over nationals (d) Over foreign nationals[147]	(a) General[148] (b) Limited to international treaty obligations[149]	(II) (b) Double criminality (c) Presence of the offender in territory of forum State (d) *Ne bis in idem*		
New Zealand	(b) Nationality (e) Protective principle (f) Universality	(b) Over nationals (d) Over foreign nationals (e) Specific legislation for particular categories of persons: (v) Other[150]	(b) Limited to international treaty obligations (d) Limited to "international crimes" (f) Limited to crimes affecting "essential interest(s) of the State"[151] (g) Limited to crimes affecting public security (h) Limited to specific list of crimes[152]			
Norway	(a) Territoriality (b) Nationality (c) Passive personality	(b) Over nationals[155] (c) Over stateless persons	(b) Limited to international treaty obligations (c) Limited to crimes of a	(I) (d) National law[158] (II) (b) Double	(a) 1946 Convention[4] (b) Specific agreement with the	(c) Potential application of civilian law/courts

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
	(e) Protective principle[153] (f) Universality (g) Other[154]	(d) Over foreign nationals (e) Specific legislation for particular categories of persons: (iv) Public officials	"serious nature" (d) Limited to "international crimes" (e) Limited to crimes accompanied with minimum imprisonment term[156] (f) Limited to crimes affecting "essential interest(s) of the State" (h) Limited to specific list of crimes (i) Other limitations to the application *ratione materiae* of domestic law[157]	criminality[159] (c) Presence of the offender in territory of forum State[160] (d) *Ne bis in idem*	United Nations	
Oman	(b) Nationality	(b) Over nationals[161]	(i) Other limitations to the application *ratione materiae* of domestic law[162]	(II) (d) *Ne bis in idem*		
Panama	(a) Territoriality (c) Passive personality	(b) Over nationals (d) Over foreign nationals	(b) Limited to international treaty obligations (d) Limited to	(II) (d) *Ne bis in idem*	(a) 1946 Convention[4] (d) Other general privileges and	

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
	(d) Effects doctrine (e) Protective principle (g) Other[163]		"international crimes" (f) Limited to crimes affecting "essential interest(s) of the State" (h) Limited to specific list of crimes		immunities applicable	
Paraguay	(a) Territoriality[164] (b) Nationality[165] (f) Universality (g) Other[166]	(b) Over nationals (d) Over foreign nationals (e) Specific legislation for particular categories of persons: (iv) Public officials[167]	(a) General[168] (b) Limited to international treaty obligations	(II) (b) Double criminality (c) Presence of the offender in territory of forum State[169]	(d) Other general privileges and immunities applicable	
Peru	(a) Territoriality[170] (b) Nationality (c) Passive personality (d) Effects doctrine[171] (e) Protective principle (f) Universality	(b) Over nationals (d) Over foreign nationals[172] (e) Specific legislation for particular categories of persons: (iv) Public officials	(a) General[173] (b) Limited to international treaty obligations (d) Limited to "international crimes" (f) Limited to crimes affecting "essential interest(s) of	(I) (c) Any other agreement (II) (a) Offence must be extraditable[173] (b) Double criminality[173] (c) Presence of the offender in	(a) 1946 Convention[4] (d) Other general privileges and immunities applicable	

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
			the State" (g) Limited to crimes affecting public security	territory of forum State[175] (d) *Ne bis in idem*		
Poland	(b) Nationality (c) Passive personality (d) Effects doctrine (e) Protective principle (f) Universality	(b) Over nationals (c) Over stateless persons (d) Over foreign nationals	(a) General[174] (b) Limited to international treaty obligations (e) Limited to crimes accompanied with minimum imprisonment term[175] (f) Limited to crimes affecting "essential interest(s) of the State" (g) Limited to crimes affecting public security (h) Limited to specific list of crimes	(I) (d) National law (II) (b) Double criminality[175] (c) Presence of the offender in territory of forum State[175] (d) *Ne bis in idem*[176]	(a) 1946 Convention[4] (d) Other general privileges and immunities applicable	(c) Potential application of civilian law/courts
Portugal	(a) Territoriality (b) Nationality[177] (c) Passive personality (e) Protective	(b) Over nationals (d) Over foreign nationals	(a) General[179] (b) Limited to international treaty obligations (f) Limited to crimes affecting	(II) (b) Double criminality[180] (c) Presence of the offender in territory of forum	(a) 1946 Convention[4] (d) Other general privileges and immunities applicable	

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
	principle (f) Universality (g) Other[178]		"essential interest(s) of the State" (g) Limited to crimes affecting public security	State[180]		
Qatar	(a) Territoriality (b) Nationality (e) Protective principle (f) Universality[181]	(b) Over nationals (d) Over foreign nationals	(f) Limited to crimes affecting "essential interest(s) of the State" (g) Limited to crimes affecting public security (h) Limited to specific list of crimes[182] (i) Other limitations to the application ratione materiae of domestic law[183]	(II) (b) Double criminality[184] (c) Presence of the offender in territory of forum State[182] (d) *Ne bis in idem*		
Republic of Korea	(a) Territoriality[185] (b) Nationality (c) Passive personality (e) Protective principle	(b) Over nationals (d) Over foreign nationals[186] (e) Specific legislation for particular categories of persons: (v) Other[187]	(a) General[188] (f) Limited to crimes affecting "essential interest(s) of the State"[189] (g) Limited to crimes affecting public security[189] (h) Limited to	(II) (b) Double criminality (c) Presence of the offender in territory of forum State (d) *Ne bis in idem*	(a) 1946 Convention[4]	(a) Exclusive application of military law to military personnel deployed as United Nations officials or experts on mission (b) Exclusive use of military courts for military personnel deployed

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
			specific list of crimes[189]			as United Nations officials or experts on mission
Serbia	(b) Nationality	(b) Over nationals	(a) General	(II) (b) Double criminality		
Slovenia	(a) Territoriality (b) Nationality (c) Passive personality (e) Protective principle (f) Universality	(b) Over nationals (d) Over foreign nationals	(a) General[190] (b) Limited to international treaty obligations (f) Limited to crimes affecting "essential interest(s) of the State" (g) Limited to crimes affecting public security (h) Limited to specific list of crimes[191]	(II) (b) Double criminality (c) Presence of the offender in territory of forum State[192] (d) *Ne bis in idem* (e) Permission to prosecute required by specific government official[193]		
South Africa	(b) Nationality[194] (g) Other[195]	(b) Over nationals (e) Specific legislation for particular categories of persons: (v) Other[196]	(h) Limited to specific list of crimes			
Spain	(a) Territoriality[197]	(b) Over nationals[199]	(a) General[200] (b) Limited to	(II) (b) Double		

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
	(b) Nationality (c) Passive personality[198] (e) Protective principle (f) Universality	(d) Over foreign nationals (e) Specific legislation for particular categories of persons: (iv) Public officials	international treaty obligations (c) Limited to crimes of a "serious nature" (d) Limited to "international crimes" (f) Limited to crimes affecting "essential interest(s) of the State" (h) Limited to specific list of crimes[201]	criminality[202] (c) Presence of the offender in territory of forum State[203] (d) *Ne bis in idem*		
Sweden	(a) Territoriality[204] (b) Nationality (e) Protective principle (f) Universality	(b) Over nationals[205] (d) Over foreign nationals (e) Specific legislation for particular categories of persons: (v) Other[206]	(a) General[207] (c) Limited to crimes of a "serious nature"[208] (d) Limited to "international crimes" (e) Limited to crimes accompanied with minimum imprisonment term[209] (f) Limited to crimes affecting "essential	(I) (d) National law (II) (b) Double criminality[210] (d) *Ne bis in idem* (e) Permission to prosecute required by specific government official[211]		(c) Potential application of civilian law/courts

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
			interest(s) of the State" (g) Limited to crimes affecting public security			
Switzerland	(a) Territoriality (b) Nationality (e) Protective principle (f) Universality (g) Other[212]	(b) Over nationals (d) Over foreign nationals (e) Specific legislation for particular categories of persons: (v) Other[213]	(a) General[214] (b) Limited to international treaty obligations[215] (c) Limited to crimes of a "serious nature"[215] (d) Limited to "international crimes"[215215] (f) Limited to crimes affecting "essential interest(s) of the State" (g) Limited to crimes affecting public security (h) Limited to specific list of crimes[216]	(II) (a) Offence must be extraditable (b) Double criminality[217] (c) Presence of the offender in territory of forum State[218] (d) *Ne bis in idem*	(a) 1946 Convention[4] (b) Specific agreement with the United Nations	(c) Potential application of civilian law/courts
Tunisia	(b) Nationality	(b) Over nationals[219]	(a) General (i) Other limitations to the application *ratione materiae* of	(II) (b) Double criminality (d) *Ne bis in idem*		

Member States	*Applicable grounds of jurisdiction*	*Jurisdiction ratione personae over crimes committed extraterritorially*	*Jurisdiction ratione materiae over crimes committed extraterritorially*	*Prerequisites to application of extraterritorial jurisdiction*	*Legal basis for applicable rules of immunity*	*Applicability to military personnel*
			domestic law[220]			
Turkmenistan	(a) Territoriality (b) Nationality[221] (c) Passive personality[222] (e) Protective principle[222] (f) Universality	(b) Over nationals (c) Over stateless persons (d) Over foreign nationals	(a) General[223] (b) Limited to international treaty obligations[224] (f) Limited to crimes affecting "essential interest(s) of the State"	(II) (b) Double criminality[225] (d) *Ne bis in idem*[226]	(d) Other general privileges and immunities applicable	
United Kingdom of Great Britain and Northern Ireland	(b) Nationality (f) Universality	(b) Over nationals (d) Over foreign nationals[227] (e) Specific legislation for particular categories of persons: (v) Other[228]	(b) Limited to international treaty obligations (c) Limited to crimes of a "serious nature" (d) Limited to "international crimes" (h) Limited to specific list of crimes[229]		(a) 1946 Convention[4] (d) Other general privileges and immunities applicable	
United States of America	(a) Territoriality (b) Nationality	(b) Over nationals[230]	(h) Limited to specific list of crimes[231]			
Yemen	(a) Territoriality (g) Other[232]					

(Footnotes on following page)

(Footnotes to Summary table of national provisions)

[1] Jurisdiction over offences committed abroad by agents or employees of Argentine authorities in the performance of their duties.
[2] Only governmental agents and employees are covered. Not applicable to United Nations experts or officials.
[3] "General" in this category refers to general application of criminal law extraterritorially.
[4] Convention on Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946.
[5] Extraterritorial jurisdiction covers only Australians undertaking tasks in a foreign country by virtue of an agreement and who are not subject to criminal proceedings in the foreign country in question.
[6] Applicable to military personnel.
[7] Includes extradition treaties.
[8] Refers to public prosecutor/attorney-general/other specific government official(s).
[9] Written consent of a minister is required.
[10] "Specific agreement" refers to a status of forces agreement, status of mission agreement or other equivalent agreement.
[11] Applicable to situations in which both the offender and the victim are Austrian nationals and have their domicile in Austria.
[12] Applicable to persons covered by the effects doctrine. It also covers persons that have their domicile or habitual residence in Austria, for criminal acts of terrorism. Moreover, it covers alleged perpetrators of international crimes in which said person is a foreigner who has his habitual residence in Austria or is present in Austria and cannot be extradited.
[13] Austrians serving as United Nations officials or experts abroad are considered to be civil servants.
[14] Applicable to nationals.
[15] Including genocide, crimes against humanity and war crimes.
[16] Required for nationals that are not civil servants. Not required for acts of terrorism and financing of terrorism.
[17] Required when the alleged perpetrator of a list of offences (see reply submitted pursuant to resolution 71/134) is not an Austrian national, nor Austrian interests are affected and the person cannot be extradited.
[18] Applicable to persons permanently residing in Belarus.
[19] Applicable to nationals.
[20] There are two limitations on this: (a) no prosecution has taken place in the host State; and (b) the penalty imposed in Belarus must not exceed the upper limit set by the host State's legislation for that offence. Exceptionally, the crimes listed in the reply submitted pursuant to the report of the Secretary-General (A/64/183 and Add.1) require no double criminality and are prosecuted by Belarus, if there has been no conviction in the foreign State.
[21] This jurisdictional basis is applicable to: (a) perpetrators of genocide, war crimes and crimes against humanity, committed against a Belgian national, a recognized refugee in Belgium whose place of habitual residence is in Belgium, or a person who has effectively, habitually and legally resided in Belgium for at least three years; (b) perpetrators of some wartime offences against a Belgian national, a foreigner residing in Belgium at the time of the outbreak of hostilities, or a national of a country that is an ally of Belgium in that war; (c) terrorist offences against Belgian nationals; (d) perpetrators of crimes that are punishable in the State in which they took place by a maximum penalty that exceeds 5 years of deprivation of freedom, committed against a Belgian national; and (e) other offences under international/European Union law that must be prosecuted "by any means".
[22] Applicable to a list of categories of offences, set out in the reply submitted pursuant to the report of the Secretary-General (A/71/167 and Corr.1).
[23] Applicable to a list of categories of offences, set out in the reply submitted pursuant to the report of the Secretary-General (A/71/167 and Corr.1). For universal jurisdiction, serious international law violations require no presence of the suspect in Belgium, in order to be prosecuted.
[24] Applicable to: (a) perpetrators having their principal residence in Belgium; (b) co-perpetrators or accomplices to a crime committed by a Belgian national; and (c) persons covered by passive personality jurisdiction.
[25] Refers to persons to which military law applies.

[26] Refers to immunities, as set out in the reply submitted pursuant to the report of the Secretary-General (A/71/167 and Corr.1).
[27] Not required for a specific list of categories of crimes, found in the reply submitted pursuant to the report of the Secretary-General (A/63/260 and Add.1).
[28] Not required for: (a) a wider list of categories of crimes, as set out in the reply submitted pursuant to the report of the Secretary-General (A/63/260 and Add.1); and (b) persons subject to military law, their attachés and the rest of the accompanying personnel in missions.
[29] Permission is required: (a) when the crime has been committed against a foreigner. In addition, the alleged victim must lodge a complaint; (b) when the submission to the Belgian authorities for investigation, prosecution and so on derives from an international obligation (namely a treaty, custom, or the European Union framework); and (c) for crimes that fall under universal jurisdiction, with some exceptions.
[30] Includes jurisdiction over offences committed on board Bolivian vessels, aircraft or other means of transport in a foreign country.
[31] Applicable to nationals.
[32] Applicable to foreign nationals.
[33] Applicable to persons covered by the nationality and protective principles.
[34] Applicable to nationals and to offences committed on board Bolivian vessels, aircraft or other means of transport in a foreign country.
[35] Applicable to persons covered by the protective principle.
[36] Refers to members and units of the Armed Forces of Bosnia and Herzegovina, police officers, civil servants and employees that are deployed abroad to participate in peace support operations and other activities
[37] Applicable to nationals.
[38] Applicable to foreign nationals.
[39] Refers to offences covered by the protective principle.
[40] Not required when the act is a criminal offence against the integrity of Bosnia and Herzegovina or if that act is considered a criminal offence under international law.
[41] Applicable to nationals.
[42] Refers to the Status of Forces Agreement of the North Atlantic Treaty Organization Partnership for Peace, in which Bosnia and Herzegovina appears as a host State.
[43] Applicable to nationals.
[44] The penal code of Bulgaria stipulates that it shall also apply to foreign nationals who have committed crimes of a general nature abroad, whereby the interests of Bulgaria or of Bulgarian citizens have been affected (art. 5).
[45] Applicable to the offences covered by the effects doctrine.
[46] Applicable to nationals.
[47] Refers to Canadians, permanent residents or entities organized under Canadian law for active bribing of foreign public officials, sexual offences or international crimes.
[48] Applicable to terrorism offences in which there are Canadian victims, when the offence is committed against a Canadian government or public facility outside of Canada, or when the offence is committed with the intent to compel the Government of Canada or a Canadian province to act or refrain from acting.
[49] Covers a specific list of offences, including international crimes.
[50] Includes offences on marine vessels, aircraft or space-related, as well as offences committed abroad by Canadian officials, military or diplomatic personnel and, generally, persons that owe some form of allegiance to Canada.
[51] Applicable to persons ordinarily residing in Canada, for the purpose of certain offences as set out in the reply submitted pursuant to the report of the Secretary-General (A/71/167 and Corr.1).
[52] With the exception of permanent residents of Canada acting abroad, this also covers the principles of universal, protective and passive personality jurisdiction.
[53] Applicable to military and associated personnel and to Canadian officials (civilian public servants).
[54] Applicable to nationals and residents of Canada.
[55] Applicable to foreign nationals.
[56] Applicable to the acts of Canadian officials.
[57] Applicable to foreign nationals.
[58] Refers to bribery of foreign public officials, production of child pornography and promotion of child prostitution.

[59] Covers production of child pornography and promotion of child prostitution, when such acts threaten or harm the sexual integrity or freedom of a Chilean.
[60] Applicable to persons having their habitual place of residence in Chile for acts covered by nationality jurisdiction.
[61] Extraterritorial jurisdiction applies when the maximum punishment prescribed in Chinese legislation is more than 3 years; otherwise prosecution on behalf of China is discretionary. This limitation is not applicable to Chinese public officials.
[62] Applicable to persons covered by the effects doctrine and the protective principle.
[63] Refers to the existence of a military penal code, whose scope of application extends to crimes committed by members of the armed forces on active duty outside Colombia.
[64] Extraterritorial jurisdiction applies when the punishment prescribed in Colombian legislation for the offence is at least 2 years.
[65] Covers the situations under the protective principle.
[66] Applicable to nationals that are not public officials and have committed a crime on foreign soil.
[67] Applicable to public officials that are not covered by immunity and to nationals that are not public officials.
[68] Covers situations in which the term of imprisonment prescribed in Colombian legislation is less than 2 years.
[69] Covers persons that are residents in Croatia.
[70] Refers to Croatian citizens that participate in peacekeeping operations or other international activities outside the territory of Croatia.
[71] Not applicable to some offences, as set out in the reply submitted pursuant to the report of the Secretary-General (A/70/208).
[72] Covers a list of offences as set out in the reply submitted pursuant to the report of the Secretary-General (A/65/185).
[73] Applicable to persons that are covered by the protective or universality principles.
[74] Applicable only to persons covered by the nationality principle. The period of prescribed imprisonment in Cyprus must exceed 2 years.
[75] Applicable only to persons covered by the nationality principle.
[76] Equivalent treatment to stateless persons holding permanent residence status in Czechia.
[77] Covers acts against nationals of Czechia, but also against stateless persons holding permanent residence status therein.
[78] Principle of "registration" and "subsidiary principle of universality" (see footnote 85).
[79] Applicable to nationals and stateless persons holding permanent residence status in Czechia.
[80] Applicable to persons not covered by the nationality principle.
[81] Applicable to situations covered by the passive personality and subsidiary universality principles.
[82] Applicable to situations in which a foreign national or stateless person has committed a crime abroad, which is covered by the principle of double criminality and the person is not extradited by Czechia; referred to as "subsidiary universality", as set out in the reply submitted pursuant to the report of the Secretary-General (A/71/167 and Corr.1).
[83] Extraterritorial jurisdiction applies to acts that are punishable abroad as felonies or misdemeanors.
[84] Covers situations under the passive personality and universality principles.
[85] Refers to legislation establishing jurisdiction over acts of Armed Forces personnel, as well as over individuals that are in the service of the State.
[86] Applicable to persons covered by the nationality and passive personality principles.
[87] Applicable to nationals that are in the service of the State.
[88] Refers to persons covered by the passive personality and universality principles, as well as aliens who have been detained in Estonia and are not extradited.
[89] Refers to legislation establishing jurisdiction for acts of members of the defence forces during the performance of their duties.
[90] Applicable to persons covered by the nationality and passive personality principles.
[91] Also covers offences connected with a Finnish vessel.
[92] Treatment equivalent to nationals is afforded to: (a) a person who was permanently resident in Finland at the time of the offence or is permanently resident in Finland at the beginning of the court proceedings; and (b) a person who was apprehended in Finland and who at the beginning of the court proceedings is a citizen of Denmark, Iceland, Norway or Sweden or at that time is permanently resident in one of those countries.

[93] Covers offences directed against a Finnish citizen, a Finnish legal entity or a foreigner permanently residing in Finland.
[94] Extends not only to offences committed in a foreign country, but also in a territory not belonging to any State.
[95] Refers to provisions establishing jurisdiction over military offences committed by "soldiers" and over misconduct of personnel operating in international crisis management missions.
[96] Applicable to persons covered by the nationality and passive personality principles.
[97] The minimum punishment for some offences must exceed 6 months.
[98] Two limitations apply: (a) no sanction that is more severe than what is provided by the law of the place of commission should be imposed in Finland; and (b) double criminality is not required if the act has been committed by a Finnish citizen and it falls under one of the offences listed as exceptions in the national legislation (including most sexual offences).
[99] Applicable to specific situations listed in Finnish legislation.
[100] Equivalent treatment to stateless persons residing in Georgia under nationality jurisdiction.
[101] Applicable to persons covered by the universality principle.
[102] Applicable to persons covered by the nationality principle.
[103] Not required for crimes committed by persons covered by the nationality principle and which are of serious or especially serious nature, directed against the interests of Georgia or if the criminal liability for such crime is prescribed by the treaties to which Georgia is a party.
[104] Applicable to situations in which the perpetrator abandons his nationality or otherwise loses it.
[105] Applicable to German public officers or persons specifically engaged in public service, who commit the offence during an official stay or in relation to the exercise of their duties.
[106] Applicable to nationals, excluding public officers and public servants on duty.
[107] Also covers situations in which a foreign national was a Greek citizen at the time of the commission, or who acquired Greek citizenship after commission of the act.
[108] Refers to provisions establishing jurisdiction over military crimes, as well as ordinary offences, committed by members of the armed forces.
[109] Covers offences under the protective and the universality principles.
[110] Extraterritorial jurisdiction under the nationality and passive personality principles; covers only acts that are classified as felonies or misdemeanours by Greek legislation. In the case of a misdemeanour, a criminal complaint by the victim or a request by the Government of the territorial State must be filed. Petty crimes can be exceptionally punished, where it is explicitly provided for by national legislation.
[111] Applicable to offences covered by the nationality and passive personality principles. Double criminality is not required when the act was committed in a territory without State organization.
[112] Not applicable to situations covered by the universality and protective principles.
[113] Also covers "places or vehicles" subject to the jurisdiction of Guatemala.
[114] The following limitations are applicable: (a) the offender has not been tried in the country where the offence was committed; (b) a charge has been brought by or on behalf of the government procurator's office; and (c) the person accused is in Guatemala
[115] Applicable to situations in which extradition of the Guatemalan offender has been refused.
[116] Applicable to situations covered by the protective principle.
[117] Also applicable when the offence abroad was committed by an official in the service of Guatemala or when the offence was committed on board a vessel, aircraft or other mode of transport of Guatemala.
[118] Refers to jurisdiction over sexual offences committed abroad by a resident or citizen of Guyana.
[119] Also applicable to persons that acquired or lost Iraqi citizenship after the act.
[120] Extraterritorial jurisdiction over nationals covers acts that are considered a felony or misdemeanour under Iraqi legislation.
[121] Applicable to situations covered by the nationality principle.
[122] Also covers ships and aircraft in certain circumstances.
[123] Refers to human trafficking.
[124] Jurisdiction for acts against or in relation to a United Nations worker, in accordance with the Convention on the Safety of United Nations and Associated Personnel of 1994.
[125] Equivalent treatment for persons "ordinarily residing" in Ireland for acts such as sexual offences involving children or human trafficking.
[126] Refers to: (a) defence forces personnel, which covers both members of national military contingents and military observers; and (b) police personnel.

[127] Extraterritorial jurisdiction over nationals covers acts of murder, manslaughter, certain sexual offences involving children and human trafficking, as well as situations in which the victim was attacked abroad but died in Ireland.
[128] Applicable to sexual offences involving children.
[129] Includes situations in which, during interventions or missions, foreign nationals commit offences on the high seas or in foreign territorial waters, against the Italian State or Italian citizens.
[130] Refers to military personnel participating in international missions.
[131] Refers to situations covered by the universality and protective principles.
[132] Also applicable to persons who have acquired or lost Jordanian citizenship after commission of the act.
[133] Applicable to alien residents in Jordan for crimes committed abroad, if the extradition of those persons has not been requested or accepted.
[134] Refers to all public security personnel of all ranks that serve in peacekeeping missions (observers, military detachments and advisers).
[135] Extraterritorial jurisdiction over nationals extends to felonies and misdemeanors, as punished by Jordanian legislation.
[136] Applicable only when the foreign judgment was handed down as a result of official information received from Jordanian authorities.
[137] Also covers vessels registered in Kenya, for acts of piracy.
[138] Applicable to extraterritorial jurisdiction over nationals.
[139] Refers to the agreement between the United Nations and Lebanon concerning the headquarters of the Economic and Social Commission for Western Asia (27 August 1997).
[140] Applicable to nationals.
[141] Exceptions for "particularly serious offences" apply (including serious sexual abuse of underage persons).
[142] Also covers acts committed on board ships or aircraft flying the flag or displaying the marks of registry of Lithuania.
[143] Equivalent treatment for permanent residents of Lithuania.
[144] Refers to persons covered by the protective and universality principles.
[145] Refers to acts covered by the universality principle.
[146] Applicable to acts covered by the nationality and protective principles.
[147] Refers to persons covered by the passive personality and universality principles, as well as the effects doctrine.
[148] Refers to acts covered by the nationality and passive personality principles, as well as the effects doctrine.
[149] Refers to the universality principle.
[150] Members of the New Zealand Defense Force, members of the New Zealand Police forming part of a United Nations force and persons serving as part of an "overseas operation" outside New Zealand. The latter refers to a person or group of people that is authorized by the Government of New Zealand to participate in any activity for which the Government wishes to provide assistance. Separate legislation also exists for internationally protected persons, United Nations and associated personnel and hostages.
[151] Includes acts of bribing of members of the Government, the judiciary or the parliament.
[152] A general list of crimes subject to extraterritorial jurisdiction is provided in the replies submitted pursuant to the report of the Secretary-General (A/63/260 and Add.1) and resolution 71/134.
[153] Applicable to nationals or residents, for acts committed abroad. It also applies to foreign nationals who are not residents, but are staying in Norway, with the limitation of a maximum penalty of a 1-year (or more) imprisonment for the act.
[154] Refers to acts committed outside the area of sovereignty of any State.
[155] Also covers persons that, after commission of the act, have acquired Norwegian nationality or have become nationals of another Nordic country (and are now staying in Norway). Equivalent treatment to foreign nationals residing in Norway.
[156] For acts covered by the passive personality principle, jurisdiction is available when the maximum penalty is an imprisonment of 6 years or more. For acts covered by the protective and universality principles and committed by foreign nationals, jurisdiction is available when the maximum penalty is an imprisonment of 1 year or more.
[157] Refers to limitations that follow from agreements with foreign States or from international law generally.

[158] The penalty to be imposed in Norway must not exceed the highest statutory penalty for a corresponding act in the country in which the act was committed.
[159] Exceptions apply with regard to certain serious crimes.
[160] The protective and universality principles are applicable to foreign nationals only when the latter are "staying" in Norway.
[161] Also covers persons that have lost or acquired Omani citizenship, after the crime was committed.
[162] The acts must be considered as felonies or misdemeanors under Omani legislation.
[163] Refers to jurisdiction: (a) over acts committed by Panamanian diplomatic agents, officials or employees who have not been prosecuted in the place where the crime was committed by reason of diplomatic immunity; (b) over acts committed abroad, when Panamanian authorities have denied the extradition of a Panamanian or foreign national; (c) over acts committed by Panamanian public servants when directed against the public servant of another State or an official of an international public body.
[164] Includes acts committed on board Paraguayan vessels or aircrafts.
[165] Covers persons that possess Paraguayan nationality at the time of the act or acquire it after the commission of the act.
[166] Includes extraterritorial jurisdiction over non-nationals who are present in Paraguay and whose extradition has been refused.
[167] Exceptionally, the extraterritorial reach may also cover actions committed outside of their official functions, when the receiving State remains inactive.
[168] Refers to nationals.
[169] Mainly applicable to offences that are punishable according to international obligations.
[170] Also covers acts on Peruvian public vessels and aircraft, wherever committed, as well as acts on Peruvian private vessels or aircraft, when committed on the high seas or in airspace over which no State exercises sovereignty.
[171] Limited to money-laundering activities.
[172] Applicable to persons covered by the passive personality, protective and universality principles, as well as the effects doctrine.
[173] Refers to acts of persons covered by the nationality and passive personality principles.
[174] Refers to nationals.
[175] Some exceptions *ratione personae* and *ratione materiae* apply, as set out in the reply submitted pursuant to the report of the Secretary-General (A/71/167 and Corr.1).
[176] Serves as an obstacle to prosecution only if the previous judgment was issued by a Polish court or an international criminal court, unless a binding international agreement indicates otherwise or the proceedings or the enforcement of the judgment were transferred to Poland.
[177] Covers only acts committed abroad by Portuguese nationals against Portuguese nationals.
[178] Refers to offences committed abroad by foreign nationals, who find themselves present in Portugal and are not extradited.
[179] Applicable to persons covered by the nationality and passive personality principles.
[180] Not required when the act is committed by a Portuguese national against a Portuguese national, if the latter resides in Portugal.
[181] Covers acts of trafficking of drugs or persons, piracy or international terrorism.
[182] Refers to offences covered by the universality principle.
[183] For extraterritorial jurisdiction over nationals to be applied, the offence must be classified as a felony or misdemeanor under domestic legislation.
[184] Applicable to offences covered by the nationality principle.
[185] Also covers acts on board a vessel or aircraft of the Republic of Korea.
[186] Applicable to situations covered by the protective and passive personality principles.
[187] Refers to military personnel of the Republic of Korea (officers, warrant officers, non-commissioned officers and enlisted soldiers (non-seconded), who are in active service).
[188] Applicable to nationals.
[189] Applicable to acts covered by the protective principle.
[190] Applicable to persons covered by the nationality principle.
[191] Refers to acts covered by the protective and universality principles.
[192] Required for offences committed abroad by foreign nationals against a third State or a citizen of a third State.
[193] Permission of the Minister of Justice is required in limited cases, as set out in the reply submitted pursuant to the report of the Secretary-General (A/65/185).
[194] Refers to jurisdiction over offences under the Sexual Offences and Related Matters Act, when committed by citizens or those ordinarily residing in South Africa.

[195] Refers to extraterritorial jurisdiction over sexual offences or other offences under the Sexual Offences and Related Matters Act, when committed by citizens or those ordinarily residing in South Africa.
[196] Refers to the existence of a defence act.
[197] Also covers acts committed on board Spanish ships or aircraft.
[198] Covers several international crimes that establish jurisdiction only when they are committed against Spanish nationals, as set out in the questionnaire response submitted on 15 June 2016.
[199] Also covers persons that acquired Spanish nationality after commission of the act. Equivalent treatment is afforded to aliens residing in Spain.
[200] Refers to persons covered by the nationality principle.
[201] Applicable to acts covered by the passive personality, protective and universality principles.
[202] Not required when it is not necessary under an international treaty or the regulations of an international organization to which Spain is a party.
[203] Presence triggers extraterritorial jurisdiction over acts committed abroad by foreign nationals, when the extradition request is not granted.
[204] Including jurisdiction according to the "flag State principle".
[205] Equivalent treatment to aliens that are domiciled in Sweden.
[206] Refers to extraterritorial jurisdiction over crimes committed by military and civilian personnel employed in the Swedish Armed Forces and persons serving in an international operation. It also refers to jurisdiction over crimes committed in the course of duty outside the Realm by a member of Swedish Police Peace Support Operations.
[207] Refers to persons covered by the nationality principle.
[208] Refers to offences covered by the universality principle.
[209] Refers to a minimum imprisonment term of 4 years.
[210] Not required for specific grounds of jurisdiction as set out in the questionnaire response submitted on 5 July 2016.
[211] Generally required for the prosecution of all crimes committed outside Sweden. Exceptions include the commission of crimes by a member of the Swedish Armed Forces in an area in which a detachment of the Forces was present.
[212] Refers to acts committed in a location which does not fall under any other criminal jurisdiction.
[213] Refers to persons covered by the military criminal code.
[214] Applicable to persons covered by the nationality principle.
[215] Applicable to persons covered by the universality principle.
[216] Refers to acts covered by the universality principle, including various sexual offences against minors.
[217] Required for offences covered by the nationality and universality principles.
[218] Presence triggers universal jurisdiction, when the person has not been extradited.
[219] Also covers persons that acquired Tunisian nationality after commission of the act.
[220] Extraterritorial jurisdiction over nationals covers acts that are classified as felonies or misdemeanors under Tunisian legislation.
[221] Also covers acts committed abroad by stateless persons permanently residing in Turkmenistan.
[222] Covers acts committed abroad by foreign nationals or stateless persons who are not permanently residing in Turkmenistan.
[223] Refers to acts covered by the nationality and passive personality principles.
[224] Refers to acts covered by the universality principle.
[225] Applicable to persons that are covered by the nationality principle.
[226] Applicable to offences covered by the nationality, passive personality and protective principles.
[227] Covers persons who are "resident" in the United Kingdom, for the purposes of jurisdiction over genocide, war crimes and crimes against humanity, as well as persons covered by the universality principle.
[228] Refers to extraterritorial jurisdiction over members of the British armed forces or anyone else who, for the time being, is subject to service law and Crown Servants acting or purporting to act in the course of their employment.
[229] As set out in the reply submitted pursuant to the report of the Secretary-General (A/71/167 and Corr.1).
[230] Equivalent treatment for legal permanent residents of the United States for the purposes of prosecution for extraterritorial engagement in acts of human trafficking.

[231] Applicable to acts covered by the nationality principle, including paying a child for prostitution or engaging in a sexual act with a child that is too young to consent.

[232] Refers to the application of the penal code of Yemen to crimes that are committed outside State territory and concern the Yemeni courts, in accordance with the Law of Criminal Procedures.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights to safe drinking water and sanitation

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, submitted pursuant to Assembly resolution 64/292 and Human Rights Council resolution 18/1.

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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation

Summary

The present report complements the Special Rapporteur's first report on the realization of the human rights to water and sanitation in development cooperation (A/71/302). The Special Rapporteur examines, through six case studies, how funders contribute to the realization of the human rights to water and sanitation and respond to related challenges and gaps. He proposes the concept of a "human rights development cycle" as a framework for funders to safeguard and implement the human rights to water and sanitation in their development cooperation activities. In accordance with that framework, he provides a critical assessment of how funders incorporate the normative contents of the human rights to water and sanitation and human rights principles in their policies, strategies and operational tools, as well as how those rights are implemented in the project selection, design, implementation, assessment and monitoring stages.

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I. Introduction

1. In 2016, the Special Rapporteur submitted a report on the human rights to water and sanitation and development cooperation to the General Assembly at its seventy-first session (A/71/302). In that first report, the human rights obligations of bilateral and multilateral funders in that regard were clarified and funders' human rights approaches, the evolution of development cooperation in the sector and trends in funding patterns were examined. The analysis and findings in that report were based on information from policy documents, academic works and submissions received in response to a questionnaire sent to States and other key stakeholders.

2. On the basis of the theoretical framework developed in the first report, in the present report, through case studies, the question of how funders contribute to the realization of the human rights to water and sanitation and respond to related challenges and gaps is examined.

3. In the present report, the term "funder" is used instead of "donor" or other terminology to highlight that entities often operate through loans and not only through donations. The term "partner State" is used instead of "recipient country"; this is intended to support a more horizontal relationship between the funder and the State receiving support.

4. Although funders include a range of actors, such as States, financial institutions, international or regional organizations, non-governmental organizations and private entities, the scope of the present report does not include assistance provided by non-governmental and private entities.

A. Methodology

5. The present report is based on an empirical analysis of six funders: France and Japan (State funders), the European Union (a regional integration organization), the World Bank and the Inter-American Development Bank (IADB) (international financial institutions) and the United Nations Children's Fund (UNICEF) (a United Nations agency). The selection took into consideration the types and regional balance of funders and their activities, and the role of funders as important contributors to worldwide funding for water and sanitation through development cooperation.

6. For each case, the Special Rapporteur assessed funders' support through grants and concessional loans[1] as framed through their policies, programmes and strategies. The information was complemented by interviews with key officials at funders' headquarters. Additionally, five current projects (three in the African region and two in the Latin American and Caribbean region) receiving support from the six funders were selected to assess the funders' operations. The selection considered the inclusion of both urban and rural areas, water and sanitation services and grant and loan funding modalities. Assessments included a review of project documents, field visits by the Special Rapporteur and interviews with implementers, beneficiaries and the funder's operational team.

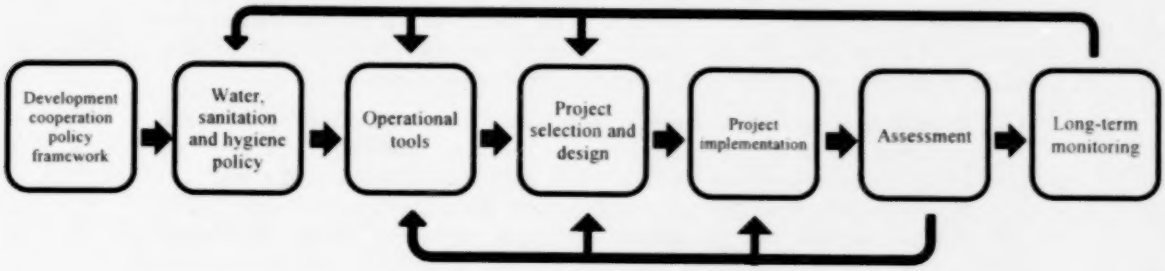
7. In order to collect the views of a range of experts, the Special Rapporteur convened a consultation on the subject of the report on 23 and 24 May 2017 in Rio de Janeiro, Brazil. Furthermore, relevant excerpts from the report were shared with the funders for their input.

[1] Concessional loans include a grant element of at least 25 per cent.

B. Analytical framework

8. The analysis carried out is based on a framework that focuses on aligning the life cycle of development cooperation with the human rights to water and sanitation. The Special Rapporteur proposes the concept of a "human rights development cycle", as presented in the figure below. In this hypothetical framework, stages are identified where funders can place guarantees and safeguards to ensure that their development cooperation will fully incorporate human rights. Within the human rights development cycle, it is expected that funders entrench the human rights principles and standards in each particular stage and in an integrated fashion throughout all stages. The framework constitutes a non-linear approach, since stages are not necessarily sequential. Notably, assessment and monitoring play a key role in feeding back into previous stages of the cycle and improving funders' capacity to contribute to the progressive realization of the human rights to water and sanitation.

Human rights development cycle



9. In the present report, the relationship between the human rights to water and sanitation and development cooperation and the obligations of funders in that context is explored (sect. II). Thereafter, through the "human rights development cycle", the following issues are examined: how funders incorporate the framework of the human rights to water and sanitation in their policies and strategies (sect. III); the contribution of operational tools to implement those rights (sect. IV); and how those rights are implemented at the project selection, design and implementation stage (sect. V) and at the assessment and monitoring stage (sect. VI). The report concludes with main findings and recommendations (sect. VII).

II. Background

A. Human rights to water and sanitation and development cooperation

10. Development cooperation may have a positive or negative impact on the realization of the human rights to water and sanitation. If conceived and implemented properly, it can assist partner States in transforming their water and sanitation sector and contribute towards the progressive realization of those rights. However, when development cooperation projects are carried out with little commitment or clarity as to how those rights are integrated, projects may have negative impacts on individuals' rights to water and sanitation.

11. Development cooperation represents an important share of funding for water and sanitation in the global South. Moreover, the way that development cooperation is carried out in many countries establishes a benchmark for how the water and sanitation sector is managed, especially in countries that strongly rely on such sources (A/71/302, para. 3). In particular, development cooperation is expected to

play an important role in achieving the Sustainable Development Goals. Target 6.a of the Goals aims to expand international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes. Moreover, target 17.2 expresses the commitment of developed countries to fully implement their official development assistance commitments in a way that would significantly increase the amount of funds disbursed to partner States. Indeed, it is estimated that the capital investments required to achieve Sustainable Development Goal 6, on water, sanitation and hygiene — approximately $114 billion per year — amount to around three times the current investment levels.[2]

12. In 2015, grants and concessional loans represented 66 per cent[3] of total development cooperation disbursements to the water and sanitation sector, reaching a total of $7.4 billion. Relevant funding modalities include funding for specific projects, technical cooperation and assistance or broader budget support for the sector. The steady global increase in funding to the water and sanitation sector since 2000 masks significant annual variations in disbursed funds and funding flows (for example, grants versus loans). In the period 2006-2010, 59 per cent of official development assistance[4] disbursements to the water and sanitation sector were grants and 41 per cent were concessional loans; in the period 2010-2015, 49 per cent of disbursements were grants and 51 per cent were concessional loans.[5]

13. Integrating human rights throughout the development cycle (see figure) helps to ensure that the needs of those living in the most vulnerable situations are prioritized, that services are provided in a safe and affordable way and that providers guarantee participation, access to information and accountability. This approach is the best way to achieve targets 6.1 and 6.2 of the Sustainable Development Goals. Otherwise, those targets will most likely not be achieved through the traditionally technocratic way that the water and sanitation sector is usually managed. Such traditions also extend to development cooperation practice and often reflect how projects in this sector are selected, designed and managed.

B. Human rights obligations of funders

14. Development cooperation in the water and sanitation sector involves various actors: the funder, the partner State and, when it exists, the implementing entity. The present report is focused on the roles of funders and how their policy, operations and overall capacity to influence contribute to the realization of the human rights to water and sanitation. The role of funders is significant, as their decisions can have an impact on the realization of those rights in different ways, depending on the extent to which decisions are based on human rights standards and principles.

15. When States are funders in development cooperation, they have legal obligations to ensure that their conduct is consistent with human rights standards and principles, pursuant to the international human rights treaties that they have ratified. In particular, the International Covenant on Economic, Social and Cultural

[2] Guy Hutton and Mili Varughese, "The costs of meeting the 2030 Sustainable Development Goal targets on drinking water, sanitation and hygiene", paper prepared for the World Bank, January 2016, p. x.

[3] The remainder was non-concessional and "other" loans. See UN-Water and World Health Organization, "Financing universal water, sanitation and hygiene under the Sustainable Development Goals: UN-Water Global Analysis and Assessment of Sanitation and Drinking Water 2017 report", 2017.

[4] Includes only grants and concessional loans; does not count the significant proportion of funding for water and sanitation through non-concessional loans.

[5] Organization for Economic Cooperation and Development, Creditor Reporting System. Available from https://stats.oecd.org/Index.aspx?DataSetCode=CRS1.

Rights (arts. 2 and 11) requires that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the rights to water and sanitation. Those articles and the Charter of the United Nations (Article 56) set out the expectation that States must take action to help fulfil economic, social and cultural rights beyond their territories.[6]

16. State funders have obligations to respect human rights in other countries, to refrain from actions that interfere with the enjoyment of the rights to water and sanitation (Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 31) and to facilitate the realization of those rights through the provision of water supply and sanitation services, financial and technical assistance and necessary aid (A/71/302, para. 11). Accordingly, as part of the Governments of those States, development cooperation agencies (for example, the Japan International Cooperation Agency and the French Development Agency) have the obligation to comply with the human rights to water and sanitation.

17. When part of a collective group, for instance, as members of international or regional organizations, States have the obligation to realize the human rights to water and sanitation through policy, decision-making processes and the activities of those organizations. The Committee on Economic, Social and Cultural Rights has stated that international organizations and international financial institutions (for example, the World Bank and IADB) have certain obligations under international human rights law based on customary law and general principles of international law (see E/C.12/2016/1) and that they should take into account the right to water in their lending policies, credit agreements and other international measures (general comment No. 15 (2002), para. 36). International organizations are also bound by the human rights-related provisions in their constitutions (A/71/302, para. 13).

18. One example of relevance to the present report is the European Union, which has human rights obligations as a part of treaty obligations. Article 21 (2) of the Treaty on the European Union establishes a mandate for the organization to support human rights in all fields of international relations. The European Union is also directly bound by the Convention on the Rights of Persons with Disabilities, which it ratified in 2010, particularly article 28, relating to the human right to water, and article 32, relating to international development. Therefore, the obligation to implement human rights in the European Union's development cooperation applies to European Union institutions responsible for formulating development policies.

19. Another example is UNICEF, which as part of the United Nations system is bound by the Charter. The Convention on the Rights of the Child (art. 45) explicitly refers to UNICEF as a source of expert assistance and advice, and therefore human rights obligations of UNICEF can be traced back to its special relationship with the Convention.

III. Policy frameworks of funders

20. Within the framework of international human rights treaties, all levels of government, including development cooperation agencies, have obligations to adopt specific policies aimed at the realization of the human rights to water and sanitation in legislative form or in other measures (Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties'

[6] As interpreted in the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (commentary to principle 28).

obligations, paras. 6-7). Outside of the human rights treaty framework, myriad funders have expressed their commitment to realizing human rights through various international instruments. For instance, in the 2008 Accra Agenda for Action, most funders committed themselves to establishing and implementing development cooperation policies and programmes that respect human rights.

21. The Special Rapporteur observed that the human rights framework might be incorporated in overarching policies that broadly encompass all development cooperation operations or in policies or strategies specifically designed for the water and sanitation sector. Furthermore, policies and strategies were also identified that focused on specific groups, such as women, indigenous populations and persons with disabilities, which occasionally included particular considerations for those people's needs related to water and sanitation. However, in order to balance the multiple topics of relevance to the present report, funders' general development cooperation policies and specific policies on water and sanitation are addressed herein.[7]

22. Funders' policies can be considered to represent the first step according to which activities will be structured. Indeed, a thorough policy framework with ingrained commitments to apply the complete framework of the human rights to water and sanitation strongly contributes to ensuring that funders' activities are conceived and ultimately implemented in ways that realize those rights.

23. In addition to policies, partnerships and strategies between funders and partner States can often determine broader objectives for development cooperation in water and sanitation and may significantly influence the nature of funders' operations.[8]

A. France

24. In 2014, France adopted legislation on international development that reaffirms its commitment to promote human rights and related principles.[9] That legislation designates water and sanitation as a stand-alone sector in the country's development cooperation agenda. The three priority areas designated in the legislation focus on assistance in creating national sector frameworks, including standards for water quality; sustainable water resource management; and sustainable, high-performance water and sanitation services. Those priorities partially overlap with certain elements of the normative content of the human rights to water and sanitation, but the legislation does not incorporate the full framework of those rights.

25. Certain key elements of the normative content of the human rights to water and sanitation are found in the water and sanitation sectoral intervention framework, 2014-2018, a guiding reference for the activities of the French Development Agency. In that document, the human rights to water and sanitation are recognized; however, the framework of those human rights is incorporated selectively throughout a variety of the strategic areas instead of occupying a clearly prominent role. For instance, one priority strategy aims to provide sustainable access to water and sanitation services for all, with a scope of action extending from urban areas to rural areas for the sanitation subsector. The objectives of that strategy demonstrate attention to human rights aspects: permanent, continuous access to water and sanitation services; affordable services through mechanisms that consider the most

[7] For an analysis of funders' policies on specific groups, see www.ohchr.org/srwaterandsanitation/developmentcooperation.

[8] For an analysis of partnerships and strategies of the six funders, see www.ohchr.org/srwaterandsanitation/developmentcooperation.

[9] France, Act No. 2014-773 of 7 July 2014.

vulnerable populations, such as social tariffs; and water quality corresponding to World Health Organization parameters. The strategy also contains provisions suggesting that acceptability of systems will be attributed importance. However, in citing only a "greater involvement" of users in that respect, the Agency does not effectively provide a guarantee that users will be able to participate and make their views considered systematically and with priority.

26. In the intervention framework, the French Development Agency emphasizes persistent institutional shortcomings and addresses the importance of regulation to ensure, for example, balance between financial sustainability and maintaining access for all users. Indeed, States should adopt water and sanitation policies and strategies incorporating the human rights to water and sanitation and take deliberate, concrete and targeted steps to establish a regulatory framework informed by those rights (see A/HRC/36/45).

27. Furthermore, the intervention framework establishes targets for an intended number of beneficiaries through projects and defines a proportion of projects or funding to support relevant elements of the human rights to water and sanitation (for example, to ensure that 50 per cent of all projects funded have a positive impact on gender).

B. Japan

28. The general development cooperation policy of Japan is found in its development cooperation charter, revised in 2015. The charter reaffirms the country's obligations to promote human rights through its international development activities. According to the charter, activities in the water supply and sanitation sector fall under the country's policy umbrella of promoting development for human security. In the charter, "quality growth" and poverty eradication through such growth is designated as a priority policy issue, encompassing water supply and sanitation. Indeed, Japan adopts a cross-sectoral approach, that is, the approach to strengthening health systems also includes the strengthening of water services and other infrastructure (CRC/C/JPN/3, para. 68).

29. Another overarching policy for development cooperation is established in the Japan International Cooperation Agency guidelines for environmental and social considerations. The guidelines specify that the principles of local stakeholder participation, accountability, transparency and access to information are indispensable for decision-making processes, in addition to respect for human rights.

30. Specifically, the Japan International Cooperation Agency has elaborated an assistance strategy on water supply and sanitation (2016). The strategy addresses some elements of the human rights to water and sanitation diffusely among six key issues. Several of those issues demonstrate the Agency's intention to compensate for multiple imbalances in the water and sanitation sector worldwide. For example, a focus on sustainable rural water supply is adopted in order to tackle long-standing deficits with regard to access in certain geographical areas and on improved sanitation, particularly in sub-Saharan Africa and South Asia. Provisions related to the standards of accessibility and quality of services and the principle of sustainability are integrated in the strategy. However, the strategy does not stipulate detailed provisions related to other crucial elements of the human rights to water and sanitation. Regarding affordability, provisions are limited to improving tariff policy and collection. Guarantees for the availability and accessibility of services for all are not mentioned either.

31. The Japan International Cooperation Agency has informed the Special Rapporteur that the strategy is currently under revision and will address the standards of the human rights to water and sanitation with greater clarity. The Special Rapporteur strongly encourages the Agency to effectively infuse the document with the human rights framework.

32. Finally, through the Yokohama Action Plan, a regional strategy for the period 2013-2017 focusing on the African region, Japan committed to specific targets for its development cooperation in the water and sanitation sector, for example, to improve access to safe water and sanitary conditions for 10 million people per year.

C. European Union

33. The European Union has in place a regulation establishing a financing instrument for democracy and human rights worldwide.[10] The most recent specific policy document on the water and sanitation sector was endorsed in 2002 by the Council of the European Union.[11] It emphasizes the importance of relevant principles and standards related to participation, gender equality, transparency and access to information, financial and environmental sustainability in service provision, affordability, and improving service levels for the poorest populations and rural, urban and peri-urban areas.

34. Since 2002, the European Union's agenda for water and sanitation in development cooperation has been subsumed into broader strategies. In 2017, the Council of the European Union adopted the New European Consensus on Development, a policy addressing all of its development activities. That policy commits the European Union and its member States to a rights-based approach in development cooperation "encompassing all human rights", and further envisages integrating the principles of inclusion and participation, non-discrimination, equality and equity, transparency and accountability. "Universal access to safe drinking water, sanitation and hygiene" is recognized in paragraph 26 of the policy as "a prerequisite for health and well-being, growth and productivity". However, the policy reveals that the European Union treats this sector of services not with a stand-alone approach, but rather in association with other priority areas, such as climate change and nutrition.

35. The European Union's indirect focus on water and sanitation services in its most recent policy is an expression of the European Commission's inclination to diminish the role of water, sanitation and hygiene as a stand-alone sector of the organization's development cooperation agenda. Relevant officials confirmed this reprioritization to the Special Rapporteur. The low profile of the sector in the European Union cooperation policy raises concerns as to the organization's capacity to align its operations with the human rights to water and sanitation, particularly since the other sectors that encompass water and sanitation do not incorporate that specific human rights framework. In 2015, the European Parliament recommended that the Commission give high priority to the water, sanitation and hygiene sector in partner States, recognizing the human rights dimensions of access to those services in development cooperation activities.[12] The Special Rapporteur observed that the Commission has still not given meaningful consideration to those recommendations.

[10] European Union, Regulation (EU) No. 235/2014 of the European Parliament and of the Council of 11 March 2014.

[11] Council of the European Union, "Draft resolution on water management in developing countries: policy and priorities for EU development cooperation", 17 May 2002.

[12] European Parliament resolution of 8 September 2015 on the follow-up to the European citizens' initiative, Right2Water.

Commentators consider that the lack of "normative coherence" in the European Union's policy on water and sanitation has diminished its ability to conduct transformative development, an ambition associated, inter alia, with the aims of Sustainable Development Goal 6.[13]

D. World Bank

36. The World Bank Environmental and Social Framework (2016), complemented by 11 key operational policies and associated safeguard procedures, is the most relevant executive policy umbrella for the Bank's development cooperation activities in the water and sanitation sector.[14] The Framework's vision statement alludes to the Bank's intention to help member States progressively realize their human rights commitments. Yet it maintains the Bank's long-standing tradition of excluding any explicit commitment to comply with the human rights framework from its policy framework.

37. Neither that Framework nor those operational policies make any specific mention of sanitation services, while references to ensuring water supply are generally subsumed in other project themes, such as the resettlement of populations. In a general requirement regarding the provision of services to communities, one of the Framework's safeguards pledges that partner States will be held to apply the concept of universal access, which is understood by the World Bank to mean unimpeded access for people of all ages and abilities in different situations and under various circumstances. That policy provision remains ambiguous in the Bank's safeguard policies as it does not specifically address the provision of water and sanitation services in their different levels. Thus, those policies do not adequately safeguard essential elements of the human rights to water and sanitation, including service availability, safety/quality, affordability and acceptability, not to mention a more thorough, sector-specific description of accessibility.

38. The *Water Resources Sector Strategy*, published in 2004,[15] contains some relevant provisions and guidelines related to the human rights to water and sanitation. For instance, it establishes that communities should be vested "with ownership rights and authority to select service providers", contributing to the enjoyment of the right to participation. Projects and programmes should strengthen "regulatory oversight capacities, institutions and processes to provide greater transparency and predictability". Moreover, financially disadvantaged people are to be ensured "access to safe, affordable water supply and sanitation services by reducing costs and increasing accountability". However, the World Bank's pro-poor focus is not equivalent to a human rights-based approach, since it does not embody the full spectrum of the human rights framework.

39. However, the scant existence of specific, universal policy guarantees for water and sanitation projects reflecting human rights standards effectively grants officials from the World Bank and from partner States the liberty of determining a project's goals and methods on a case-by-case basis. Moreover, one senior official of the Bank understands that "any project that improves access to improved [water supply and sanitation] is a step towards universal access" and that this is enough not to be negligent of the human rights framework. In the light of this discretionary approach,

[13] Harlan Koff and Carmen Maganda, "The EU and the human right to water and sanitation: normative coherence as the key to transformative development", *European Journal of Development Research*, vol. 28, No. 1 (January 2016), pp. 91-110.

[14] Applies to two World Bank Group institutions: the International Development Association and the International Bank for Reconstruction and Development.

[15] Ibid.

while some projects funded by the Bank could possibly be aligned with the human rights framework, others risk neglecting human rights.

E. Inter-American Development Bank

40. In 2014, IADB published its Water and Sanitation Sector Framework Document, which recognizes and draws on the human rights framework in formulating priorities and strategies for development cooperation in that sector. The Framework aims to create effective mechanisms to provide services to marginalized populations in peri-urban and rural zones, which is in accordance with the framework of the human rights to water and sanitation. The policy clarifies that these services may require alternative, low-cost solutions and an adjusted definition of access that nevertheless provides efficient services of good quality.

41. Furthermore, the Framework outlines four major goals and lines of action to be pursued by IADB over a three-year period (2014-2017). Notably, one of those major goals consists in reinforced governance in the sector and an emphasis on State action in the sector under the framework for the human rights to water and sanitation. Specific lines of action include encouraging IADB member States to develop and implement policies to achieve universal coverage and incorporate the concept of the human rights to water and sanitation in their legislation, regulatory processes and political strategies; creating and/or strengthening regulatory agencies, with particular attention to small cities and rural areas; and supporting reliable information systems.

F. United Nations Children's Fund

42. UNICEF has in place several policies and relevant strategic plans for water and sanitation that are based on the human rights framework. UNICEF has adapted those policies and strategies to meet the Sustainable Development Goals. That has important implications for its approach to development cooperation in the water and sanitation sector, as it determines the service levels that UNICEF will uphold and aim to implement.

43. The UNICEF Strategy for Water, Sanitation and Hygiene (2016-2030) integrates the full normative content of the human rights to water and sanitation in its vision for the sector and targeted outputs. The strategy outlines multiple "programming principles" — aspirational, outcome-based objectives to be considered throughout project design and implementation — that incorporate several human rights principles. Some of those programming principles include reducing inequality, delivering quality services at scale and strengthening accountability at all levels.

44. The current UNICEF Strategic Plan (2014-2017) outlines a water, sanitation and hygiene indicator framework including targets for access in households and schools. It designates several outcomes and outputs that express an ample integration of issues of particular relevance to human rights. Some of those targets include enhanced support for children and families leading to sustained use of safe drinking water, adequate sanitation and good hygiene practices; increased national capacity to provide access to those services; strengthened political commitment, accountability and national capacity to legislate, plan and budget for the scaling up of interventions; and increased capacity of Governments of partner States to identify and respond to key issues for the human rights to water and sanitation. Most of the outcomes and outputs in the strategy rely on country-wide measurements, that is,

"countries with an established target to provide access to drinking water to underserved populations".

IV. Operational tools of funders

45. Funders employ a variety of practical instruments directed to project managers and operational teams to administer development cooperation activities in ways that comply with their policies and goals. Such tools are key to translating policy provisions into actual methods to realize the human rights to water and sanitation. Examples of such instruments include toolboxes, manuals and technical guidelines, which provide the particular benefit of being more adaptable and renewable than policy frameworks. Thus, such instruments fulfil the purpose in the human rights development cycle of instructing funders' operational teams on how to maximize positive contributions to the realization of the human rights to water and sanitation. Yet, given the frequent absence of an obligation for funders and implementers to apply those instruments, their effectiveness can be limited.

46. Among the six funders analysed, instruments and methods were identified in various forms, most often comprising a combination of tools and guidelines undertaken or applied at different levels, such as at headquarters, in country offices and with local project implementers.

47. One example is the IADB manual on the human rights to water and sanitation. The manual aims to generate good practices by providing guidance on how those rights can be incorporated in the activities of actors in the water and sanitation sector. It attempts to offer both general and more targeted, practical guidance to establish an enabling environment for the realization of the human rights to water and sanitation. As part of the manual's implementation, IADB has undertaken plans to perform four pilot studies in different locations in the region to facilitate information exchange and to hone in on particular challenges for specific actors.

48. Through the first European Union action plan on human rights and democracy (2012-2014), the European Union coordinated the creation of a toolbox to contribute towards a rights-based approach to development cooperation. Published in 2014, the toolbox, entitled "A rights-based approach, encompassing all human rights for European Union development cooperation", aims to outline how the organization will integrate human rights principles into the conceptualization and implementation of its development activities. The toolbox provides details on action to be taken at headquarters and in the field for synchronization between those units. However, probably due to the toolbox's generic approach, human rights analyses have been judged to be less evident in water and sanitation programmes.[16] Officials reported to the Special Rapporteur that field office teams still lack comprehensive awareness on how to align field operations with the human rights to water and sanitation, as political and civil rights are generally given more prominence. Such insufficiencies were previously identified in an evaluation of European Union development cooperation activities. However, it was reported that ongoing training on the rights-based approach at headquarters and country offices has aimed to address, inter alia, the rights to water and sanitation.

[16] Federica Petrucci and others, "Thematic evaluation of the European Commission support to respect of human rights and fundamental freedoms (including solidarity with victims of repression)", evaluation for the European Commission, vol. 1, December 2011. Available from https://ec.europa.eu/europeaid/sites/devco/files/evaluation-cooperation-ec-human-rights-1298-main-report-201112_en_0.pdf.

49. Other examples include technical reports, briefing papers and other documents produced by funders to assess past experiences, take stock of current activity or provide recommendations for future practice. When such reports are formulated with a clear view to progressively realizing the human rights to water and sanitation, their often non-binding character can possibly be offset. For instance, in 2013, the European Commission commissioned the preparation of a briefing paper[17] to examine the organization's development cooperation from the perspective of those rights. The paper evidences that, despite the organization possessing a methodology to apply a human rights-based approach in its cooperation activities, policies and practices lack bolder and clearer orientations to realize the human rights to water and sanitation. Accordingly, it recommended assessments of the organization's water and sanitation projects from the perspective of human rights with the aim of catalysing discussion and developing appropriate policies, guidelines and practices. It is a desirable minimum standard for funders to develop studies with a specific human rights focus and to advocate for their officials to give meaningful consideration to their findings. Furthermore, issues and recommendations brought to light by those studies may be used by diverse stakeholders, empowering them to urge funders to commit themselves to the progressive realization of the human rights through their development agendas.

50. All six funders possess instruments that aim to underscore their cross-sectional development efforts to advance the interlinkage between water and sanitation and gender equality. Those efforts include taking steps to achieve greater equality by considering gender-differentiated needs and responsibility in households and communities;[18] providing questions to be asked by operational teams throughout the stages of strategic planning, project implementation, assessment and monitoring;[19] identifying and providing guidance on how to address gender-based challenges;[20] using indicators throughout the project design and implementation stages to assess the integration of gender-related concerns;[21] guaranteeing that projects will benefit a minimum proportion of female-headed households;[22] and establishing monitoring, financial tracking and accountability systems to assess how equally women and men benefit from projects.[23]

V. Project selection, design and implementation

51. Development cooperation for the water and sanitation sector entails human rights impacts from the point when funders decide how to dedicate resources to projects. The way in which a given funder balances the types of projects that it supports is a proxy of how human rights concerns are considered in that funder's development agenda. Geographical balance — between world regions, States and areas within a State; between countries with different levels of development; or between urban, peri-urban and rural dwellers — can influence the impact of the

[17] Malcolm Langford, *The right to water and sanitation in development cooperation: the state of play and the European Union* (Brussels, European Parliament Directorate-General for External Policies, 2012).

[18] Japan International Cooperation Agency thematic guidelines on gender and development, 2009.

[19] United Nations Children's Fund, "Gender-responsive water, sanitation and hygiene: key elements for effective WASH programming", March 2017.

[20] World Bank, "Toolkit for mainstreaming gender in water operations", 2016.

[21] French Agency for Development, "Boîte à outils genre: eau et assainissement" (Gender toolbox: water and sanitation), 2015.

[22] Inter-American Development Bank, "Progress report on the implementation of the gender policy and gender action plan for operations (2011-2013)", March 2014.

[23] European Commission, "Guidance note on the EU Gender Action Plan 2016-2020", 8 March 2016.

agenda on the human rights. The same can be considered in relation to projects focusing on water, sanitation, hygiene, capacity-building or institutional support. Also, the share of projects through loans or grants and how they are allocated can have an impact on the progressive realization of the human rights to water and sanitation, affecting funders' capacity to influence project goals and partner States' potential financial burden.

52. Applying a human rights-based approach in the initial design stage of a project in the form of human rights pre-assessment is essential to ensuring that it will embed the human rights framework from its objectives and methods through to its implementation. The specific measures to effectively implement that approach depend on the nature of the project. Possible measures include establishing human rights standards as a requirement in project conceptualization and other due diligence measures that enable funders to identify and avoid the negative impact of their activities on human rights.

53. The way projects are implemented may also have an impact on human rights, depending on, inter alia, how beneficiaries are involved, the role of people in vulnerable situations and sustainability considerations.

A. Levels of service

54. In project design, several criteria have a critical impact on how the rights of beneficiaries may be realized, such as the level of the services to be implemented (for example, piped network, shared facilities or individual on-site solutions) and how these services are planned to gradually improve over time.

55. On the basis of the apparent trends revealing a preference for large systems to the detriment of basic systems (see A/71/302), it is doubtful that current development cooperation practice is adequately targeting the world's greatest needs for water and sanitation or is contributing to reduce existing disparities in the water and sanitation sector. Recognizing that large systems often require more expensive solutions than basic systems and may also benefit people living in vulnerable situations, the figures suggest a stronger concentration of funding for citywide projects. In 2015, approximately 20 per cent of all water sector funds were disbursed to basic systems, compared with 40 per cent for large systems, which was by far the largest proportion of water sector funding. Data from the 2017 UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water report show a continued prevalence of funder investments in large drinking water systems in urban areas of middle-income countries.

56. Large infrastructure projects are not necessarily contrary to the rights to water and sanitation, but the crucial question is whether such projects improve access for those who already enjoy some degree of access, or whether they take the challenging step of extending access to those who continue to be excluded from even basic access, especially in peri-urban areas and informal settlements (see A/HRC/18/33/Add.3).

57. Furthermore, often forgotten in development projects are the safe management of on-site sanitation and faecal sludge, hygiene promotion and menstrual hygiene management. In the projects assessed, it was observed that hygiene management is often absent, particularly menstrual hygiene management, under the pretext that it is "culturally" difficult to address.

58. One project, aimed at benefiting populations in small towns, supported rehabilitating and expanding piped drinking water systems but built only a handful of public sanitary facilities while training local artisans to produce slabs required

for latrines and stimulating a micro savings scheme for residents to purchase those building materials. In that project, support to sanitation was framed through the community-led total sanitation methodology aiming to mobilize communities to completely eliminate open defecation without any external financial input. Thus, it is based on spurring demand creation and behavioural change from users. However, without adequate, continuous guidance and financial assistance, some users may sacrifice essential resources in adopting service levels that are actually unsafe and do not represent a real gain from a human rights perspective.

59. In some projects assessed, especially those targeting rural areas, the level of the technological solution is not intrinsically problematic. However, the lack of a plan to manage or, when necessary, upgrade those solutions in the future risks jeopardizing their long-term ability to comply with human rights requirements. It is essential for funders and partner States to have a vision of how those projects will be managed in the long term in order to provide sustainable services that deter retrogressions in the realization of human rights. This must be done with consideration of specific contexts and should involve adequate planning measures. When more than one intervention is required to provide an acceptable level of service to a community, it is essential for the intermediate levels of service to be as safe as possible and to facilitate scaling up with the least amount of financial losses and in the most sustainable fashion possible. Indeed, decisions related to project planning must take great care to avoid investments that fully replace previous services in the same location instead of upgrading those solutions. Otherwise, such investments risk representing an irresponsible use of public funds and a possible compromise of other human rights (A/70/203, para. 88).

60. The scope of a project is a key determinant of its capacity to effectively realize human rights. Many infrastructure-oriented projects in the water and sanitation sector often face a dilemma of benefiting fewer people with a higher level of services or extending a lower level of services to a larger group of users. The latter option was prevalent among the projects assessed in rural areas. However, political interests within the partner State, funders' own biases (for example, to report high coverage figures) and funders' commercial interests ("to push money out the door") can influence the selection of some projects over others. These influencing factors can lead to the selection of projects with a broader scope to the detriment of projects focusing on a smaller number of beneficiaries living in vulnerable conditions. The key question under the human rights framework is: who will benefit and who will be left behind? Applying that framework would encourage the project managers to start with those in the most vulnerable situations. The challenge with this decision is to ensure affordable access to services, sustainability of the system and medium- and long-term planning for the future inclusion of all persons in service provision. If funders and partner States opt for a project with broader coverage and a lower level of services, the same concerns should be raised while also establishing a vision for future upgrades and improvements to the level of access.

B. Sustainability

61. Infrastructure projects that rapidly prove to be unsustainable are widespread in water and sanitation. This was evidenced, for example, by the European Court of Auditors review of European Union development assistance for the sector in sub-Saharan countries. According to a review of 23 projects in six countries, despite infrastructure being properly installed, fewer than half of the projects delivered results meeting the beneficiaries' needs and the majority of projects were considered to be unsustainable in the medium and long term unless non-tariff revenue could be

ensured or operational institutions (that is, service providers) could be strengthened.[24]

62. Achieving behavioural change in beneficiaries and institutions and creating awareness on safe drinking water, sanitation and hygiene services are fundamental to ensuring transformative development and sustainable water and sanitation projects. Yet efforts to achieve those objectives are seriously limited by time-based constraints that are common in development cooperation projects. The usual time frame for the full cycle of project implementation is from three to five years at most. A combination of several factors make such time frames too short to guarantee effective capacity-strengthening and lasting behavioural change. Ensuring the continuity of measures initially funded through development cooperation, especially those related to project management, may be a determinant in guaranteeing projects' medium- to long-term sustainability. Several projects assessed revealed that funding was allocated to deploy local activists or community workers tasked with raising awareness on hygiene and encouraging local participation in user associations. However, those projects did not contain conditions or mechanisms that would ensure continuous support for those functions after the project terminated.

63. Before projects are completed, at times, some are extended with subsequent phases. The related negotiations for those subsequent phases can draw attention away from the current project's implementation and shift it to the propositions related to the subsequent phases. Funders often require new and/or additional targets for a second phase, which can broaden the scope of the project instead of concentrating efforts on existing objectives. A longer-term commitment from funders — far beyond the limited time frame of projects — would provide lasting improvements to local authorities' and different stakeholders' capacity to provide water and sanitation services in a way that is consistent with the human rights framework.

C. Coverage of services

64. Decisions related to the coverage of projects can have an impact on the beneficiaries, particularly the population in the most vulnerable situations. Applying a human rights approach to development cooperation in the water and sanitation sector would involve a greater emphasis on providing services for those populations who predominantly live in small, dispersed rural communities or in peri-urban areas. In the latter case, the informal nature of settlements may impede such dwellers from being connected to citywide systems. The principle of equality and non-discrimination sometimes requires the adoption of targeted measures and affirmative action in order to achieve substantive equality (Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 10). Thus, funders and partner States should work together and identify individuals and groups to target, particularly those who are in vulnerable situations, and not be limited to identifying those who are financially disadvantaged, often called "the poor".[25]

65. One project aiming to provide piped water to a small town excluded some of the poorest inhabitants who were living in more distant locations from that town. A common rationale that is cited to justify such exclusion is the standard of maximum

[24] European Court of Auditors, *Special report No. 13/2012: European Union development assistance for drinking water supply and basic sanitation in sub-Saharan countries* (Luxembourg, Publications Office of the European Union, 2012).

[25] Through, for instance, the World Bank Water Supply, Sanitation and Hygiene Poverty Diagnostic initiative.

per capita cost of investment in water and sanitation. Such standards can result in the exclusion of more dispersed populations or populations who live in areas where solutions entail greater costs. That project failed to adhere to the principle of equality and non-discrimination by intentionally excluding certain inhabitants from its scope. Conversely, the project specifically took into consideration persons with disabilities in the project's intervention area and ensured their inclusion through a baseline study aimed at identifying such individuals. Moreover, local entrepreneurs were trained to design appropriate toilets according to the needs of persons with disabilities.

D. Reconciliation between financial sustainability and affordability

66. Improvements to partner States' water and sanitation services funded through development cooperation, even when provided without an obligation for full repayment, often entail an increased need for revenues from tariffs or taxes to keep those services operational and sustainable in the long term. Some funders request or even impose an obligation on partner States to fully or partially recover the costs to operate and maintain such systems through tariffs. Consequently, depending on how tariffs for water and sanitation services are set upon completion, these projects can have an impact on affordable access to services. When funders impose conditionalities requiring full cost recovery through tariffs and the result is higher service fees for users, the affected users must be able to petition the amount of the tariff and seek recourse. If they are not able to do so, the public authorities are therefore not protecting users from the adverse impact of unaffordable services, and the funder shares responsibility for facilitating the creation of such circumstances.

67. In the projects assessed herein, most funders did not demonstrably ensure that a sustainable financing strategy would be established for long-term service provision. In only one project were community committees created that were tasked with setting tariffs for piped water services that were being extended to their neighbourhoods. Another project entailed immediate affordability concerns as it required households to pay for connection costs to a piped water network; the national regulation established a maximum discount of 60 per cent of that cost for users in situations of poverty. Overall, in the projects reviewed, little evidence exists indicating that funders support governments and service providers in developing specific schemes to ensure reconciliation between economic sustainability and access to services for users with insufficient economic means.

E. Acceptability

68. Acceptability of services can be achieved by taking users' distinct characteristics, habits, preferences, needs and beliefs into account during project design and implementation. Attention to acceptability was observed in a project that used participatory methods to inform the design of several schools' sanitation facilities. Occurring in a majority Muslim community, the project took into consideration the community members' particular preferences for the design of toilet facilities, in addition to the needs of persons with disabilities, who were also included in the participatory processes. Activities to promote awareness throughout the implementation of projects can also encourage behavioural change and lead to greater acceptability of services.

F. Participation

69. In the context of development cooperation, the right to participation is relevant at two stages. First, the participation of a diversity of stakeholders is relevant during the processes of planning, implementation, monitoring, and evaluation and assessment (A/71/302, para. 17). Such participatory processes should involve input from national stakeholders and people whose rights are affected that can meaningfully affect the decision-making process in all aspects of development cooperation activities. Second, establishing participatory processes between the funder and the beneficiaries at the level of project implementation is key. If the knowledge and expectations of beneficiaries are not incorporated into those processes, cooperation will never improve their access to water, sanitation and hygiene in a manner consistent with their cultural values and human rights principles (ibid.).

70. The participation of women on an equal footing with men and the inclusion of disadvantaged groups is an important aspect. One project aiming to provide rural dwellers with water, sanitation and hygiene services prioritized the participation of women in committees, establishing a minimum of 50 per cent women members in those forums. It is important to highlight that active and meaningful participation cannot be reduced to such quantitative requirements, but also has to do with women's power to influence decisions, to voice their needs, to make individual choices and to control their own lives. Counting the number of heads at meetings may be accompanied by an assessment of the actual influence of women's participation in decision-making processes (see A/HRC/33/49).

71. Moreover, two projects assessed employed community workers and local committees of residents tasked, inter alia, with ensuring that beneficiaries could accompany the project implementation process and relay their opinions or concerns.

72. One project, in which the funder provided budget support to the partner State, consists of maintaining dialogue among government authorities with the aim of supporting sector reform. However, the process seemed to apply a non-participatory approach as relevant stakeholders, including local governments and civil society organizations, were apparently excluded from the discussion of key decisions. That may be a source of future conflict and could jeopardize the legitimacy of the agreements that will be made. The human rights to water and sanitation require funders to take measures to ensure meaningful participation by all stakeholders and to support partner States in developing methods to promote participation (for example, multi-stakeholder dialogues involving the authorities concerned, civil society organizations, private sector entities and marginalized groups). Such dialogues can contribute to building political will, to planning a more appropriate restructuring in the sector recognizing the diverse needs of various groups and their rights, and to creating opportunities to hold public authorities accountable.

G. Access to information and transparency

73. From the perspective of rights holders, when beneficiaries of development cooperation projects have transparent access to information, they are more able to meaningfully participate in decision-making and are empowered to claim their rights and hold duty-bearers accountable (A/71/302, para. 18).

74. From a broader perspective, ensuring the public's access to information on development cooperation projects enhances transparency and enables more effective monitoring of a funder's contribution to reducing inequalities and achieving the aims of its development agenda. Adequate access to information relies on the

availability and accuracy of information. For instance, the majority of development projects registered in the relevant database of the Organization for Economic Cooperation and Development do not clearly indicate whether rural or urban areas have been targeted (ibid., para. 20). In the research for the present report, it was apparent that many funders' self-reported data differed greatly from data in the Creditor Reporting System of that organization.

VI. Project assessment and monitoring

75. Funders have project assessments and long-term portfolio monitoring in place at some or all steps of their development cooperation operations. However, those processes are still seldom aligned with the human rights framework. From the standpoint of the human rights development cycle, thorough assessments and monitoring based on the rights to water and sanitation can provide essential feedback on previous stages in the cycle. Notably, funders should collect and generate data to identify potential concerns for the relevant human rights principles and standards that are not being adequately safeguarded through the funder's policy, operational tools and projects. Those data should assist funders in making adjustments to the previous stages of the human rights development cycle.

A. Project assessment

76. Assessing a project's contribution to the realization of the human rights to water and sanitation requires a set of methods balancing quantitative and qualitative assessments and covering the full range of the normative content of the human rights to water and sanitation and human rights principles. Among several ways of assessing a particular project, process assessments and output and outcome indicators can be applied to assess a funder's capacity to contribute to the progressive realization of human rights through their activities.

77. Process assessment should encompass the variety of measures performed throughout project implementation with a basis in upholding human rights standards. Examples include ensuring the active and meaningful participation of all stakeholders and providing access to transparent information. Process assessment is especially crucial to situating development cooperation projects in a broader context. In this sense, UNICEF urges partner States to include a "narrative" aspect, which cannot be reflected in reporting mechanisms based on quantitative standards, as it helps to nuance apparently positive or negative results. However, the use of narratives is generally less common among funders and could help to give more substance to quantitative indicators. For instance, Japan has set a target to build capacity for 1,750 professionals working in water supply in Africa. Yet the specific content of such interventions is not defined, nor does it interact with a subsequent outcome indicator. Specifically, it is not possible to assess the nature of the training imparted to the professionals and related improvements to service provision as a result of the training.

78. Subsequent to a project's completion, it is essential to systematically produce ex post human rights assessments of projects. Such assessments are critical to identifying the sustainability of services and understanding a project's medium- and long-term impacts on human rights and the causes of those impacts. Critically, assessments should be made available to the public in order for the relevant authorities to be held accountable.

79. Outcomes in ex post human rights assessments should inform several characteristics of beneficiaries gaining access to services, allowing impacts to be

assessed for populations living in conditions of poverty or vulnerability and identifying reductions in inequality. In particular, those data must go beyond limited assessments of access and availability of services (for example, the number of houses connected to a piped network) and should include ways of identifying discrimination and inequalities, collection time and other barriers to physical access, water quality, safety, acceptability and affordability.

80. Post-project assessments can be conducted either by funders themselves, through internal or external sources or by partner States. The Japan International Cooperation Agency employs evaluations conducted by the Governments of partner States, consultants, think tanks, academic institutions or non-governmental organizations with professional competence in the field.[26] Such assessments are meant to ensure greater transparency and fairness in Japanese development cooperation. Formulating development policies based on evidence confirmed by partner State-led evaluation processes rather than evaluations performed solely by funders may enrich and legitimize those funders' policies.[27] To that end, it is important to offer support where necessary to enhance the evaluation capacities of the partner State in an impartial and independent manner.

B. Long-term monitoring

81. Monitoring the realization of human rights through the implementation of water and sanitation projects requires improving funders' existing monitoring procedures by adjusting their scope, methods for data collection and indicators. Some funders have included several indicators in their monitoring systems that encompass components of the human rights to water and sanitation (for example, disaggregated information on beneficiaries' gender or socioeconomic conditions). However, none of the funders assessed systematically model their monitoring frameworks on the standards related to the human rights to water and sanitation.

82. Some funders (IADB, UNICEF and the World Bank) use output frameworks as a primary tool to evaluate their performance and the achievement of particular projects' goals. Others (France, IADB, Japan and UNICEF) incorporate wide-scale quantitative targets into their worldwide and/or country strategies (for example, the number of people to be reached with new or improved access to drinking water and sanitation).

83. The benefits of systematically monitoring processes, outputs and outcomes through the human rights framework are twofold. First, doing so allows funders and partner States to use the lessons learned from monitoring data to feed back into future projects and make adjustments to their operations in order to fill the gaps identified in relation to the progressive realization of the human rights to water and sanitation. Second, experiences in managing projects through a human rights lens can subsequently be documented, detailing relevant concerns that arose throughout project implementation and registering methods of dealing with them with the greatest possible benefit. Such findings could then be widely disseminated and help to improve the design, appraisal and execution of future development cooperation projects.

[26] Japan, Ministry of Foreign Affairs, "ODA evaluation guidelines", 8th ed., May 2013.

[27] Japan, Ministry of Foreign Affairs, "Annual report on Japan's ODA Evaluation 2016", November 2016.

VII. Main findings and recommendations

84. Similar to the broad conclusion reached in the first report (A/71/302, paras. 41-44), the Special Rapporteur finds that the explicit commitment to human rights in the six funders' policies constitutes a heterogeneous patchwork. While some funders' policies consider the human rights framework, particularly the human rights to water and sanitation, others are only sporadically aligned with those rights and reveal varying degrees of clarity regarding their application to development cooperation. However, even in cases where the human rights framework was adequately incorporated in funders' policies, the Special Rapporteur observed significant gaps in the application of this framework during project implementation. The root causes of such gaps are varied, including non-implementation of applicable policies at the project stage, non-integration of the human rights framework in the funder's policies and tools and the absence of a human rights approach in the project selection and design stages.

85. A variety of operational tools was observed among the different funders, some with greater relevance to the human rights to water and sanitation than others. The extent to which those tools can guarantee that development cooperation projects will have positive impacts on human rights depends on at least two factors. First, tools based explicitly on the human rights framework will naturally be more apt to incorporate all relevant standards and cause minimal negative impacts. Recognizing that water and sanitation projects are parts of broader, dynamic contexts that can limit a given project's results, such tools must ensure adaptability in order to maximize the progressive realization of the human rights to water and sanitation and other related rights. Second, mainstreaming the use of such tools by operational teams involved in project implementation will avoid the risk of standards being applied selectively.

86. While most funders' project assessments are mostly focused on attainment of project objectives and sustainability of services, a specific human rights-based assessment during and upon completion of projects was not observed. Carrying out monitoring with a human rights perspective on a long-term basis would improve funders' ability to assess the elements of sustainability in their projects and to protect, respect and fulfil human rights.

87. Regarding project assessment and monitoring for the human rights to water and sanitation, it is important to highlight the need for balance in processes and outcomes, in addition to outputs. Indeed, funders and partner States must make equal efforts to identify and address the systemic and often cross-sectional determinants of particular phenomena, such as the discrimination of certain groups in access to services, while rigorously gathering data and monitoring such complex development issues.

88. The Special Rapporteur emphasizes the importance of having an open discussion on and identifying obstacles to incorporating the human rights framework in all development policies, programmes and projects and identifying good practices in overcoming such obstacles (ibid., para. 74 (a)). He reaffirms several recommendations provided in his first report, which are complemented and validated on the basis of the empirical analysis carried out in the present report, and presents the below recommendations for funders to implement throughout the human rights development cycle.

89. **Relating to funders' policy, the Special Rapporteur recommends:**

(a) **That policies that specifically incorporate the standards and principles of the human rights to water and sanitation in their entirety be established so that those rights are reflected when setting priorities and strategies for development cooperation activities;**

(b) **That a focused strategy on water and sanitation be established in accordance with the human rights framework, with emphasis on its prioritization so that it is not subsumed into broader strategies or other thematic policies;**

(c) **That the human rights to water and sanitation be emphasized in funders' policy on specific groups, such as women, persons with disabilities and indigenous peoples, complementing overarching development cooperation policies;**

(d) **That funder States adopt national legislation recognizing the human rights to water and sanitation so as to ensure additional guarantees that those rights are applied in development cooperation policies and activities.**

90. **Relating to funders' operational tools, the Special Rapporteur recommends that funders:**

(a) **Translate the human rights commitment in their policies into operational tools and training tailored to the realization of the human rights to water and sanitation in particular contexts;**

(b) **Make the use of such operational tools a requirement in all funding operations to guarantee the complete application of the human rights framework at the project implementation stage;**

(c) **Monitor whether those tools are implemented in project design and implementation.**

91. **In the project selection, design and implementation stages, the Special Rapporteur reiterates the importance of measures and safeguards with the specific aim of ensuring human rights compliance (ibid., para. 74 (b)) and recommends that funders:**

(a) **Balance water and sanitation projects and coverage of those services between urban and rural areas in a way consistent with the progressive realization of the rights to water and sanitation in each context;**

(b) **Ensure that the selection, design and implementation of projects apply the framework for the human rights to water and sanitation, notably prioritizing those people in the most vulnerable situations;**

(c) **Identify and avoid any negative impact on human rights prior to and during project implementation;**

(d) **Ensure that the design and implementation of projects are carried out in a transparent manner with the participation of related stakeholders, including beneficiaries of the project, providing ample access to relevant information and including mechanisms to address the accountability of funders;**

(e) **Ensure that projects provide a sustainable financing strategy for long-term service provision, including affordable access to services and inclusion of all persons in service provision;**

(f) Provide, in projects supporting institutional development and policies, lasting improvements to the capacity of local authorities and different stakeholders to actually adopt water and sanitation services in a way consistent with the human rights framework.

92. **In the assessment and monitoring stage, the Special Rapporteur recommends that funders:**

(a) Develop and systematically produce thorough assessment and monitoring based on the human rights framework, including assessment undertaken during and after the project implementation;

(b) Improve existing project assessment protocols by adjusting their scope, methods for data collection and indicators, including human rights principles;

(c) Monitor, on a long-term basis, project outputs and outcomes through indicators and qualitative analyses based on the human rights framework;

(d) Prepare studies that assess all stages of the funder's activities in the human rights development cycle, envisaging the application of the related findings to improve the funder's contributions to the realization of the human rights to water and sanitation;

(e) Utilize assessment and monitoring as feedback for operational tools and the project selection, design and implementation stages and to advocate that their officials give meaningful consideration to the related findings.

93. **Finally, the Special Rapporteur recommends:**

(a) That the Committee on Economic, Social and Cultural Rights request funder and partner States to report on the issue of development cooperation and the human rights to water and sanitation and to provide a venue for civil society to submit "alternative reports";

(b) That the Human Rights Council consider in the universal periodic review the issue of development cooperation in the context of water and sanitation services.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, submitted pursuant to Human Rights Council resolutions 15/8 and 34/9.

* A/72/50.

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

In the present report, the Special Rapporteur examines the right to housing of persons with disabilities. She provides an overview of their diverse housing circumstances — from institutionalization, homelessness and grossly inadequate housing to experiences of stigmatization and exclusion — linked to a broad range of impairments, including psychosocial, physical, sensorial and intellectual, as well as perceived impairments. She questions why those widespread human rights violations have not been addressed as a priority by States or the international community.

The Special Rapporteur considers how the "disability human rights paradigm" affirmed in the Convention on the Rights of Persons with Disabilities has the potential to breathe new life into the right to adequate housing. She highlights the fundamental principles of a human rights-based approach to disability, such as dignity, substantive equality, accessibility and participation, as well as the overriding obligation to realize the right to housing to the maximum of available resources, and correlates them to the key features of the right to adequate housing. She reflects on how the right to housing can be more effectively claimed by persons with disabilities and adjudicated by courts and tribunals and reviews some effective policy and legislative initiatives that are necessary to implement that right.

She concludes her report with key recommendations highlighting the transformative potential of the disability human rights paradigm and how it must be better harnessed in order to realize the right to housing of persons with disabilities in accordance with the commitments of the 2030 Agenda for Sustainable Development.

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I. Human rights-based approach to disability and the right to adequate housing[1]

1. For persons with disabilities, choosing where and with whom to live, being part of a community and having access to adequate and accessible housing are central to a life of dignity, autonomy, participation, inclusion, equality and respect for diversity. The indivisibility and interdependence of the right to adequate housing with other human rights are at the heart of the lived experience of persons with disabilities. Access to safe and secure housing, to water and sanitation in the home and to community life with access to services and forms of support is often the difference between life and death, security and abuse, and belonging and isolation. Yet the right to adequate housing is frequently absent from initiatives promoting the human rights of persons with disabilities. It is imperative that the right to adequate housing be accorded the same centrality in the implementation of the rights of persons with disabilities as housing occupies in their lives.

2. In the Special Rapporteur's view, the right to adequate housing of persons with disabilities must be understood as a dialogue between the jurisprudence and commentary that has evolved over many years and is guaranteed under the International Covenant on Economic, Social and Cultural Rights and the framework for the human rights of persons with disabilities set forth in the Convention on the Rights of Persons with Disabilities. The right to housing enshrined in article 11 of the International Covenant has been understood to encompass much more than physical shelter. It is recognized as the right to live in security, peace and dignity. It is fundamentally connected to the rights to life and to non-discrimination and the freedom to choose where to live, as well as to the rights to freedom of expression and association and to participate in public decision-making. It includes security of tenure, the availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, appropriate location and cultural adequacy.[2] Those central components of the right to housing have special meaning for persons with disabilities and give rise to particular obligations of States and other actors.

3. At the same time, the right to adequate housing must incorporate the transformative understanding of the human rights of persons with disabilities that is encapsulated in the Convention on the Rights of Persons with Disabilities. The "disability human rights paradigm" represents a "dramatic change in rights discourse".[3] It gives new meaning to the concepts of the interdependence and the indivisibility of rights, in particular in relation to the right to live in dignity in a home within a community. It rejects charitable and medical approaches to disability, recognizing that discrimination, inequality and disadvantage are socially constructed responses to diversity and difference. It offers a human rights-based alternative, placing persons with disabilities at the centre of their own lives, as subjects of rights. It recognizes that discrimination often takes the form of programmes and policies designed to meet the needs of dominant groups while

[1] The Special Rapporteur is grateful for all the contributions received for the present report, in particular from the Special Rapporteur on the rights of persons with disabilities, the Human Rights and Disability Adviser of the Office of the United Nations High Commissioner for Human Rights and the participants in an expert consultation, held in Geneva on 23 June 2017. She also thanks Governments, civil society, disability organizations and individuals for their submissions, which are available from www.ohchr.org/EN/Issues/Housing/Pages/Therighttohousingofpersonswithdisabilities.aspx.

[2] Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 8.

[3] Michael Ashley Stein, "Disability human rights", *California Law Review*, vol. 95, No. 1 (February 2007), p. 74.

ignoring the needs of persons with disabilities. It affirms that dignity, autonomy, independence and participation rely on not only freedom from institutionalization and State control but also positive measures by Governments to support the right to live in the community as one chooses.

4. The incorporation of the human rights-based approach to disability into the understanding of the right to adequate housing is a work in progress. In the formative years of international human rights development, persons with disabilities were often invisible and their right to adequate housing often neglected. Disability was not listed as a ground of discrimination in the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights. Disability began to receive more attention during the International Year of Disabled Persons in 1981 and the United Nations Decade of Disabled Persons (1983-1992), but a normative framework was not developed until 1993, when the Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted by the General Assembly.

5. In 1994, the Committee on Economic, Social and Cultural Rights made an important advance with the adoption of general comment No. 5 (1994) on persons with disabilities. The Committee noted that an estimated 70 per cent of persons with disabilities worldwide lacked access to the services that they required and that "there is no country in which a major policy and programme effort is not required".[4] It emphasized that States were required "to take positive action to reduce structural disadvantage ... in order to achieve the objectives of full participation and equality within society for all persons with disabilities" and that that included the right to support services for living in the community and to housing that was accessible, with additional resources made available.[5]

6. The negotiation of the Convention on the Rights of Persons with Disabilities, however, brought about a transformative approach to disability, placing the economic, social and cultural rights and the civil and political rights of persons with disabilities within a unified framework. In the Convention, the right to adequate housing is recognized on an equal basis without discrimination, including through the provision of reasonable accommodation. Furthermore, a substantive right to adequate housing for persons with disabilities is affirmed outside an "equal enjoyment" framework and without comparison to the mainstream population. It is thus recognized in the Convention that the right to adequate housing has a particular meaning for persons with disabilities and imposes distinct obligations upon States.

7. In the light of the extreme conditions of inadequate housing, institutionalization and homelessness experienced by persons with disabilities around the world and the commitment made by States in the 2030 Agenda for Sustainable Development to ensure access to adequate and affordable housing by 2030, the Special Rapporteur considers the incorporation of the disability human rights paradigm into the right to adequate housing to be a matter of the highest priority for States and the international community.

[4] Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994) on persons with disabilities, para. 8.

[5] Ibid., para. 9.

II. Housing realities of persons with disabilities

A. Statistical challenges

8. It is estimated in the *World Report on Disability 2011* that persons with disabilities make up between 15.6 and 19.4 per cent of the global population. The percentage is higher in lower-income countries, at 18 per cent of the population, compared with 11.8 per cent in higher-income countries.[6] There are therefore more than 1 billion persons with disabilities around the world, yet little data are publicly available on the housing circumstances of that population.

9. The lack of consistent implementation of accepted methods of surveying persons with disabilities has led to significant variance in data, making comparisons across countries or regions difficult.[7] General surveys and censuses conducted by household often overlook individuals who are homeless or living in unrecognized informal settlements, institutions or group care facilities. When information has been collected on persons with disabilities, narrow definitions have usually been applied and housing concerns ignored.

10. The Washington Group on Disability Statistics has developed two standard sets of questions for surveying populations. The short set covers six core areas of activity and has been adopted by 70 countries. It provides the best opportunity for States to obtain disaggregated data that will allow international comparisons and benchmarks.[8] The extended set of questions covers a greater range of domains of functioning, a number of which are associated with psychosocial impairments.[9] Neither set addresses housing. The best way to obtain reliable data on housing and disability is to conduct surveys based on the extended set of questions of the Washington Group, supplemented by questions on housing and homelessness.

11. Surveys of the existing housing conditions of persons with disabilities reveal significant inequality in the enjoyment of the right to housing. In such a survey conducted by the Republic of Korea in 2015, it was found that persons with disabilities were far more likely than others to have difficulty paying rent and other housing expenses, less likely to have "suitable" housing and more likely to have housing that did not meet the minimum standards of habitability.[10]

B. Housing experiences of persons with disabilities

1. Stigmatization, discrimination and criminalization

12. Stigmatizing notions of disability as an abnormality, inferiority or medical condition associated with disease manifest acutely in the housing experiences of persons with disabilities. People with disabilities are often forced to remain in their homes because of stigma and fear of violence. Proposed housing for persons with psychosocial or intellectual disabilities is frequently subject to neighbourhood opposition, and residents are frequently shunned or ostracized by neighbours.

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[6] World Health Organization and World Bank, *World Report on Disability 2011* (Geneva, WHO Press, 2011), pp. 25-29.

[7] Ibid., pp. 21-29.

[8] The short set of questions is available from www.washingtongroup-disability.com/washington-group-question-sets/short-set-of-disability-questions/. The six questions relate to seeing, hearing, walking, cognition, self-care and communicating.

[9] The extended set is available from www.washingtongroup-disability.com/washington-group-question-sets/extended-set-of-disability-questions/.

[10] See the submission by the Republic of Korea for the present report.

Children with disabilities are frequently hidden away and denied access to extended family, neighbours and other children.[11]

13. When seeking both private and public housing, persons with disabilities face overt and indirect discrimination. Sometimes access to housing is denied because of an irrational fear that facilities will be contaminated. Income and employment status is used in many countries to vet prospective tenants such that well-paid, full-time workers without a disability are considered to be "qualified" for affordable rental housing, while persons with disabilities with lower incomes are denied access. People with psychosocial disabilities are often treated as unworthy tenants because of "abnormal" behaviour that is defined as "antisocial". Persons with intellectual disabilities are also discriminated against on the basis of an assumed lack of capacity to take care of the premises and deprived of the legal capacity to sign rental agreements.

14. Discrimination is compounded by other grounds, notably sex, gender, socioeconomic status, race and belonging to ethnic, religious or linguistic minority groups. Indigenous peoples in Canada experience twice the rate of disability as the non-indigenous population and are subjected to intersecting discrimination on the basis of indigeneity, poverty and disability.[12] Criminalization of persons with disabilities, in particular those living in homelessness and those with psychosocial disabilities, is common. A typical pattern for persons with psychosocial disabilities is first to lose their housing, when their needs are not accommodated or when they do not receive adequate financial assistance, then to be criminalized in the context of homelessness and then to be incarcerated. In prison, punitive responses for persons with psychosocial disabilities result in extended isolation, segregation, further deterioration of mental health and an ongoing cycle of homelessness and incarceration.

2. Institutionalization and deprivation of choice

15. Institutionalization is a clear example of how violations of the right to housing occur when disability is misconstrued as a medical condition. Removing persons with disabilities from the general population and subjecting them to isolation and extreme social control is rationalized on the basis that they are being provided with "treatment" or "care". Institutionalization often combines the worst living conditions with severe deprivation of liberty and cruel and inhuman treatment, including physical and sexual abuse. Conditions are invariably overcrowded, with limited or no access to sanitation and hygiene facilities, as has been documented in countries including Guatemala, Indonesia and Mexico.[13] Residents in institutions and institution-like settings are often precluded from having outside social or family relations and deprived of choices about activities, social relationships, sexuality and identity. Persons with psychosocial or intellectual disabilities are at highest risk of being institutionalized forcefully[14] and, outside formal institutions, are often

[11] United Nations Children's Fund (UNICEF), "Children and young people with disabilities", fact sheet (May 2013), p. 23. Available from www.unicef.org/disabilities/files/Factsheet_A5__Web_NEW.pdf.

[12] See the submission by a coalition of Canadian non-governmental organizations for the present report.

[13] A/71/310, paras. 25-26; case No. PM 370/12, patients at the Federico Mora Hospital, Guatemala; Human Rights Watch, "Living in hell: how people with mental health conditions in Indonesia are treated" (21 March 2016), available from www.hrw.org/report/2016/03/21/living-hell/abuses-against-people-psychosocial-disabilities-indonesia; Disability Rights International, "No justice: torture, trafficking and segregation in Mexico" (Mexico City, 2015), available from www.driadvocacy.org/wp-content/uploads/Sin-Justicia-MexRep_21_Abr_english-1.pdf.

[14] A/HRC/28/37, para. 19.

subjected to extreme levels of institution-like control in privately operated rooming houses or "halfway" houses.

16. Orphanages housing abandoned children similarly institutionalize and isolate children with disabilities. One study found that 45 per cent of children living in Russian State institutions had impairments.[15]

17. Forced institutionalization often occurs as an indirect result of other violations of the right to adequate housing. When States fail to provide necessary forms of support for living in the community, or when persons with disabilities or their families simply have no means to afford housing, persons with disabilities may be forced to live in institutions because of a lack of housing options.[16] Legislative protection of legal capacity and supportive decision-making can be rendered ineffective in the context of housing decisions when there is no support or affordable housing available for living in the community.

18. In other circumstances, living in an institutional setting or remaining with family may be a decision made by a parent, guardian or family member on behalf of a person with a disability. Institutions that are originally presented as optional may subsequently deny residents the right to leave. Years of living in segregated settings have devastating effects on the autonomy of residents and their ability to exercise independent agency, making it difficult for them to trust or imagine a positive community-based alternative.

19. Deinstitutionalization without adequate housing and community support can have devastating consequences. In Gauteng Province, South Africa, more than 1,300 persons with psychosocial and intellectual disabilities were transferred owing to government budget cuts from a private hospital to the care of an array of non-governmental organizations, most of which lacked the capacity, oversight and resources necessary to address the needs of those transferred. This led to widespread ill-treatment and the death of more than 70 persons.[17]

3. Homelessness

20. Homelessness disproportionately affects persons with disabilities. In a vicious circle, disability often leads to homelessness and homelessness, in turn, creates or exacerbates impairments and additional barriers linked to stigma and isolation. Of the homeless adults in shelters in the United States of America, 43 per cent have a disability.[18] Persons with psychosocial and intellectual disabilities are particularly vulnerable to homelessness and its effects.

21. The Special Rapporteur has proposed a new rights-based framework under which homelessness is understood as a deprivation of housing (both physical and social) but also as a socially constructed group identity that is linked to stigmatization and discrimination, much of which is rooted in perceptions about persons with disabilities. As a result, in most places, that population suffers severe isolation and neglect. Homelessness and related violations of the right to life often

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[15] Human Rights Watch, "Children with disabilities living in special homes in Russia: what life is like and what needs to change", 15 September 2014. Available from www.hrw.org/report/2014/09/15/abandoned-state/violence-neglect-and-isolation-children-disabilities-russian.

[16] A/HRC/28/37, para. 25.

[17] See communication from South Africa, available from www.ohchr.org/EN/Issues/Housing/Pages/Communications.aspx; Malegapuru W. Makgoba, "The report into the circumstances surrounding the deaths of mentally ill patients: Gauteng Province" (Pretoria, South Africa, Office of the Health Ombud, 2017).

[18] National Council on Disability, "The state of housing in America in the 21st century: a disability perspective" (Washington, D.C., 19 January 2010), p. 10. Available from www.ncd.gov/publications/2010/Jan192010.

result from deinstitutionalization without adequate community support or affordable housing in the community.[19]

22. Homelessness for persons with disabilities is also linked to the breakdown of family relationships. A study in Montreal, Canada, of homeless persons with intellectual disabilities found that almost all individuals who lived on the street or in shelters had had no contact with their families since becoming homeless.[20] On mission in Chile, the Special Rapporteur visited a homeless shelter run by the Salvation Army in Valparaiso where many of the residents were persons with intellectual or psychosocial disabilities who had been shunned or abandoned by their families.

4. Informal settlements and homeless encampments

23. Persons with disabilities living in poverty in cities commonly live in informal settlements or homeless encampments. The Special Rapporteur has been shocked by the deplorable conditions endured by persons with disabilities in those contexts. Many, including young children and older persons, are left to languish in isolation, sometimes in dark rooms without electricity, hidden from view at the back of the home, without access to community centres, social opportunities or health clinics.

24. Water, sanitation and hygiene facilities are often inaccessible and located some distance from the home. Those with mobility impairments may be dependent on assistance or forced to drag themselves along the ground to reach the facilities. In many situations, persons with disabilities are simply unable to gain access to toilets, must defecate in their homes and are often unable to remove waste. Streets or alleys in informal settlements are often sand, gravel or mud, sometimes built into steep cliffs and hill-sides, and are not accessible to persons in wheelchairs or with reduced mobility.

25. The experiences of persons with intellectual or psychosocial disabilities living in informal settlements and homeless encampments vary. In some cases, communities develop impressive informal networks to provide the necessary support and ensure inclusion in the community, providing community living that avoids institutionalization and segregation. In other situations, however, as observed first-hand by the Special Rapporteur on mission, informal settlements duplicate societal patterns of discrimination and isolation, exacerbated by deprivation of the most basic necessities.

5. Living with family

26. For many persons with disabilities, living with family members and relying on informal support is their only option. Family members commonly show strong commitment in their provision of support. Those providing support are usually women, who are frequently abandoned by spouses and required to relinquish possibilities of employment, leading to long-term poverty.[21]

27. In other circumstances, however, living with family is not an appropriate or safe option. Persons with disabilities are more likely to be subjected to abuse within families or other households. A study in Uganda found that half of interviewees with psychosocial disabilities reported having been subjected to abuse at the hands of

[19] A/HRC/34/58, para. 18.

[20] C. Mercier and S. Picard, "Intellectual disability and homelessness", *Journal of Intellectual Disability Research*, vol. 55, No. 4 (Montreal, 2011), pp. 441-449.

[21] A/HRC/34/58, para. 20.

their relatives.[22] Another study found a high incidence of abuse among children with disabilities by someone upon whom they were dependent for survival and well-being.[23] Individuals are sometimes tied or chained up by family members[24] or left locked in isolation.[25] The ability to speak out is limited by the individual's isolation and dependence upon the perpetrator for support, and, in many situations, there is no one to turn to for help.

6. Housing, neighbourhoods and programme design

28. Most housing and development is designed as if persons with disabilities do not exist, will not live there or deserve no consideration. Housing programmes and urban planning are rarely vetted for barrier-free design, and international development assistance for housing rarely includes requirements or resources for accessible housing. Housing funding and individual housing subsidies provided by many Governments are based on what are considered "normal" expenditures on food, housing and other necessities, without consideration of the higher expenditure requirements of persons with disabilities. Eligibility for credit or for rental contracts is usually assessed on the basis of the "normal" ratio of credit or rent to income, which would be unattainable and certainly not "normal" for persons with disabilities.

29. Inaccessible housing and programmes designed without consideration of the needs of persons with disabilities deprive society of the benefits of the full participation of persons with disabilities in all areas of life and are costly to States. Moreover, reasonable accommodation of individual needs is considerably more costly and difficult than it would be if housing were designed to be accessible or easily modified.[26]

7. Natural disasters, conflict and other humanitarian situations

30. Mass displacement caused by situations of risk, including armed conflict, humanitarian emergencies and natural disasters, has catastrophic effects on persons with disabilities. In a survey by the United Nations, it was found that only 20 per cent of persons with disabilities could evacuate their living spaces immediately without difficulty in the event of an emergency and that a disproportionate number would be injured or die in the event of a disaster because their needs would not met by organized efforts.[27] Persons with disabilities who are refugees, affected by disasters or living in conflict and post-conflict situations are especially vulnerable to mass, often repeated displacement, resource shortages, limited or non-existent services and access to rehabilitation or reconstruction and a wide array of security concerns.

31. Conflict and displacement also give rise to increased numbers of persons with disabilities. In Lebanon, the Syrian Arab Republic and the Gaza Strip, for example,

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[22] Mental Disability Advocacy Centre and Mental Health Uganda, *"They Don't Consider Me as a Person": Mental Health and Human Rights in Ugandan Communities* (2014), p. 16.

[23] Handicap International and Save the Children, "Out from the shadows: sexual violence against children with disabilities" (London, Save the Children UK, 2011), p. 15. Available from www.savethechildren.org.uk/sites/default/files/docs/out_of_the_shadows_5.pdf.

[24] Mental Disability Advocacy Centre and Mental Health Users Network of Zambia, *Human Rights and Mental Health in Zambia* (2014), p. 24.

[25] Mental Disability Advocacy Centre and Mental Health Uganda, *"They Don't Consider Me as a Person"*, p. 17.

[26] Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on accessibility, para. 15.

[27] United Nations Office for Disaster Risk Reduction, "Living with disability and disasters: UNISDR 2013 survey on living with disabilities and disasters — key findings" (2014), p. 2.

conflict has contributed to high numbers of persons with disabilities.[28] At the same time, in each of those places, adequate, accessible housing is extremely scarce, with housing stock having been destroyed and a lack of access or specific policies blocking access to the materials and resources necessary to rebuild homes. In refugee camps, poorly lit and remotely located latrines can lead to difficult access and experiences of sexual violence for women with disabilities, while crowded, narrow walkways can result in persons with visual impairments falling into open sewers.[29]

32. The right to housing is a central part of humanitarian action, from emergency shelter to longer-term accommodation and settlement. Until recently, however, shelter has been provided without consideration of the potential barriers for persons with disabilities.

III. Central principles of the human rights-based approach to disability

33. The unique fusion of civil, political and economic and social and cultural rights in the Convention on the Rights of Persons with Disabilities has immense potential to breathe new life into the right to adequate housing of persons with disabilities. Five central tenets of the disability human rights paradigm are particularly important in understanding the right to adequate housing in that context.[30]

1. Dignity, autonomy and freedom to choose

34. "Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons" is a guiding principle set forth in article 3 (a) of the Convention that is particularly critical in the interpretation of the right to adequate housing. The deprivation of choice of where and with whom to live is often the most critical assault on dignity and autonomy for persons with disabilities.

35. Freedom of choice for persons with disabilities is not just a civil and political right to freedom from forced institutionalization. In article 19 of the Convention, the right to be free to choose where and with whom one lives is set out as a positive right to be included in the community, with access to a range of residential and other support services. In addition, article 19 must be read in conjunction with and is reinforced by article 28 to require not only services but also adequate, accessible housing in which to live.

2. Substantive equality and non-discrimination

36. In the Convention, a broad and substantive concept of the right to equality and non-discrimination is affirmed. Prohibited discrimination includes any distinction,

[28] Palestinian Central Bureau of Statistics, "On the eve of the International Population Day", 11 July 2013. Available from www.pcbs.gov.ps/site/512/default.aspx?tabID=512&lang=en&ItemID=844&mid=3171&wversion=Staging; Jad Chaaban and others, "Survey on the socioeconomic status of Palestine refugees in Lebanon" (American University of Beirut and the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 2016), p. 10; HelpAge International and Handicap International, *Hidden Victims of the Syrian Crisis: Disabled, Injured and Older Refugees* (London and Lyon, Park Lane Press, 2014), p. 6.

[29] Michael Ashley Stein and Janet E. Lord, "Enabling refugee and IDP law and policy: implications of the U.N. Disability Convention on the Rights of Persons with Disabilities", *Faculty Publications* (2011), pp. 408 and 431.

[30] Convention on the Rights of Persons with Disabilities, arts. 3, 9, 19 and 28.

exclusion or restriction on the basis of disability that has the purpose or effect of impairing or nullifying the enjoyment of human rights, including the right to adequate housing. As such, the provision extends to any failures to address systemic inequality in access to adequate housing, including those relating to inadequate services, insufficient social protection and a lack of affordable housing.

37. The right to non-discrimination also requires Governments and private actors to take positive measures to reasonably accommodate the needs of persons with disabilities insofar as such accommodation is "necessary and appropriate" and does not impose a "disproportionate or undue burden". Reasonable accommodation is not restricted to physical modifications to existing housing. It also includes an obligation to adapt the application of laws and policies.[31] As a component of the right to non-discrimination, reasonable accommodation is considered an immediate obligation of States.

38. Equality and non-discrimination are crucial for the realization of the right to housing of persons with disabilities under article 28. States must take positive measures to the maximum of available resources to address systemic homelessness and deprivation of housing, which disproportionately affects persons with disabilities, and to strive towards the full realization of the right to adequate housing for all persons with disabilities. In the Convention, it is made abundantly clear that the right to non-discrimination of persons with disabilities is not simply a negative right, requiring Governments and private actors to refrain from actions that exclude persons with disabilities, but also a positive right, requiring them to take measures to ensure the enjoyment of the right to housing. As Andrea Broderick notes, "the intersection of equality and socioeconomic rights in the [Convention on the Rights of Persons with Disabilities] may provide a key to unlocking the structural inequalities which disabled people, and by extension other marginalised groups, have encountered for too long now".[32]

3. Accessibility

39. Article 9 of the Convention, in which the obligation of States to identify and remove barriers and ensure accessibility is outlined, is another unique provision in that instrument that is particularly important to housing. As affirmed by the Committee on the Rights of Persons with Disabilities in its general comment No. 2 (2014) on accessibility, accessibility is an enabling condition to ensure that persons with disabilities live independently and participate fully in all aspects of life.[33]

40. Under article 9, States are required to ensure that all housing available to the public, including social and private rental housing, takes into account all aspects of accessibility for persons with disabilities. In the article, a broad range of accessibility issues "encompassing the physical environment, transportation, information and communication, and services"[34] are addressed and obligations are established to: ensure physical accessibility, such as through ramps and accessible doors, as well as the accessibility of windows, bathrooms and kitchens; remove the communication barriers confronted by persons with disabilities applying for and living in housing; and ensure access to work, services and public spaces — in short, to ensure that all aspects of the housing environment are accessible. As the Special Rapporteur has consistently noted in her dialogue with government officials, under

[31] See, for example, Communication No. 3/2011, *H.M. v Sweden*, views adopted on 19 April 2012.
[32] Andrea Broderick, "Harmonisation and cross-fertilisation of socio-economic rights in the human rights treaty bodies: disability and the reasonableness review case study", *Laws (Special Issue Disability Human Rights Law)*, vol. 5, No. 4 (2016), p. 14.
[33] Committee on the Rights of Persons with Disabilities, general comment No. 2, paras. 13-14.
[34] Ibid., para. 13.

that article, States are also required to address economic and social accessibility barriers by ensuring sufficient benefits or housing subsidies to cover the cost of adequate housing and other services.

41. Article 9 should also be read in conjunction with the obligation to progressively realize the right to adequate housing under article 28. As Gerard Quinn observed, "many of these obligations will require resources and extensive systemic change — all subject to the overall obligation of progressive achievement contained in article 4.2 with respect to socioeconomic rights".[35] The obligations of States under article 9 can be seen as components of the requirement to immediately implement inclusive rights-based strategies for the realization of the right to housing. Both housing strategies and plans for the implementation of accessibility must establish definite time frames, allocate adequate resources, prescribe the duties of the public authorities, including regional and local authorities, and private actors and ensure participation and consultation with those affected.[36] Ensuring that any new housing is developed in accordance with barrier-free design requirements is an immediate obligation of States. States must also adopt, as quickly as possible, legislation and plans to ensure that barriers in existing housing are removed over time.[37]

4. Participation and access to justice

42. Participation is integral to the implementation of the right to housing of persons with disabilities. In article 4 (3) of the Convention, it is stated that, in the implementation of legislation, policy or other decisions, States must closely consult with and actively involve persons with disabilities through their representative organizations. As stated by the Special Rapporteur on the rights of persons with disabilities, participation leads to the promotion of agency and empowerment, ownership, pride and better decisions, since persons with disabilities are best placed to identify their diverse needs.[38] Effective participation, however, must be grounded in human rights and meaningful accountability. Under article 33 of the Convention, all States are required to develop independent institutions to monitor its implementation, including the right to housing, ensuring that persons with disabilities and their representative organizations are involved and participate fully in the monitoring process.

43. Under article 13 of the Convention, it is required that persons with disabilities have effective access to justice in all stages of legal proceedings, on an equal basis with others. States should ensure access to justice for claims relating to the right to adequate housing of persons with disabilities, establish complaints and accountability mechanisms and ensure that courts are authorized and adequately resourced to hear and adjudicate claims relating to the right to adequate housing of persons with disabilities. National human rights institutions also have an important role to play in facilitating participation and effective monitoring by providing independent accountability mechanisms and in facilitating access to justice through complaints procedures or by supporting or initiating systemic claims before courts or tribunals.

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[35] Gerard Quinn, "The interaction of non-discrimination with article 9: added reasonment", unpublished paper, September 2010, cited by Janet Lord in a presentation given in 2010 for the general day of discussion on accessibility of the Committee on the Rights of Persons with Disabilities.

[36] Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 12; Committee on the Rights of Persons with Disabilities, general comment No. 2, para. 24.

[37] Committee on the Rights of Persons with Disabilities, general comment No. 2, para. 14.

[38] A/HRC/31/62, paras. 28-31.

5. Obligation to adopt reasonable measures to realize the right to adequate housing to the maximum of available resources

44. Article 2 (1) of the Convention mirrors the International Covenant on Economic, Social and Cultural Rights in its provision that each State party shall undertake to take measures to the maximum of its available resources, with a view to achieving progressively the full realization of the rights enshrined in those instruments. The reasonableness standard has been incorporated into the Optional Protocol to the Covenant. Courts, treaty bodies and commentators have articulated a standard of "reasonableness" in assessing whether the positive measures taken by States meet the requirements of international human rights law.[39]

45. The Committee on Economic, Social and Cultural Rights has identified some indicators of whether a State has satisfied a standard of reasonableness, including:

(a) The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of the right;

(b) Whether resource allocation is in accordance with international human rights standards;

(c) Whether the steps were taken within a reasonable time frame;

(d) Whether the precarious situation of disadvantaged and marginalized individuals or groups has been addressed;

(e) Whether policies have prioritized grave situations or situations of risk;

(f) Whether decision-making is transparent and participatory.[40]

46. The standard of reasonableness to assess States' compliance with the obligation to take measures to realize the right to adequate housing for persons with disabilities runs parallel to the similar standard of reasonableness that is applied in the context of the accommodation of the individual needs of persons with disabilities. The former relies on a standard of maximum of available resources to assess programmatic measures to address the systemic needs of persons with disabilities, while the latter relies on a standard of undue or disproportionate burden in relation to the specific measures required in individual cases. In many cases, however, there is no clear divide between individual needs and needs shared with others in the positive measures taken by Governments to ensure access to accessible housing. As Janet E. Lord and Rebecca Brown note, "the obligation to reasonably accommodate the unique needs of persons with disabilities merges with the obligation under the [International Covenant on Economic, Social and Cultural Rights] and under the economic, social and cultural rights provisions in the [Convention on the Rights of Persons with Disabilities], to apply the maximum of available resources to realizing the substantive rights in question".[41]

47. For the Special Rapporteur, it is critical that both dimensions of States' positive obligations be implemented on the basis of a robust standard of reasonableness. That means adopting reasonable measures to address the systemic

[39] See Malcom Langford and others, eds., *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (Pretoria, South Africa, Pretoria University Law Press, 2016).

[40] See Committee on Economic, Social and Cultural Rights, statement on an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant, E/C.12/2007/1.

[41] Janet E. Lord and Rebecca Brown, "The role of reasonable accommodation in securing substantive equality for persons with disabilities: the United Nations Convention on the Rights of Persons with Disabilities", in *Critical Perspectives on Human Rights and Disability Law*, Marcia H. Rioux, Lee Ann Basser and Melinda Jones, eds., (Brill Publishers, 2011), p. 279.

need for adequate and accessible housing of persons with disabilities by implementing necessary programmes and budgetary allocations while also meeting the immediate obligation to accommodate individual needs. The requirement of reasonable measures in both contexts should be seen as a rigorous standard to be met, never as a defence for inaction.[42]

48. The Special Rapporteur also emphasizes that reasonable accommodation in housing is often linked to systemic patterns of discrimination and imbalances in power "which result in a society being designed well for some and not for others".[43] The Supreme Court of Canada warned that reasonable accommodation claims should not be allowed to shield systemic discrimination from scrutiny or leave in place imbalances in power that have led to the neglect of the needs or perspectives of marginalized groups in the design of policies.[44] It is important to ask, in each individual case, not only what is required by the individual person with a disability to ensure equality, but also why the housing system created the need for individual accommodation in the first place. Requests for modifications of buildings or housing policies are usually only made because those requirements were not adequately considered when buildings or policies were designed in the first place. Persons with disabilities must be empowered to challenge housing, planning and zoning, social protection and justice systems that fail to meet their needs and thus deny them access to adequate housing.

IV. Key components of adequate housing

49. In its general comment No. 4 (1991) on the right to adequate housing, the Committee on Economic, Social and Cultural Rights identified key factors to be considered in determining if housing is adequate. The following is a consideration of those factors as they apply to persons with disabilities.

1. Security of tenure

50. Security of tenure is a cornerstone of the right to housing. Persons with disabilities are less likely to enjoy security of tenure and often experience catastrophic results owing to displacement and forced eviction. They often lose not only their physical home but also a network of support and contacts, without which they may not survive.

51. The obligations of both public and private housing providers with respect to security of tenure must be interpreted and applied in the light of the overriding obligation to ensure the right of persons with disabilities to live in adequate and secure housing within the community, with access to services and support. States must ensure legal protection against forced evictions in all forms of housing tenure, from ownership and formal rental agreements to informal settlements.[45] No eviction should be permitted that would result in the loss of housing or necessary forms of support for persons with disabilities.[46] Where relocation is unavoidable or agreed to by those affected, alternative housing must be provided that meets all requirements

[42] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations, paras. 9-11.

[43] Shelagh Day and Gwen Brodsky, "The duty to accommodate: who will benefit?", *Canadian Bar Review*, vol. 75 (1996).

[44] Ibid.

[45] Guiding principles on security of tenure for urban poor, See A/HRC/25/54.

[46] Communication No. 5/2015, *Ben Djazia and Bellili v. Spain*, views adopted on 20 June 2017, para. 16.5; Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions, para. 16; Basic principles and guidelines on development based evictions and displacement, A/HRC/4/18, annex I, paras. 54-56.

for accommodation of disability and ensures access to community support.[47] Persons with disabilities should not be required to move from the centres of cities, where there are services and opportunities for participation in social networks and employment, to outlying areas, where opportunities for meaningful social participation are fewer, leading to isolation.[48]

2. Affordability

52. The inability to afford adequate housing is frequently the greatest obstacle facing persons with disabilities in realizing their right thereto. They are more likely to live in poverty, and they have higher housing, equipment and health-care costs. Family income is reduced when a family member has to take on the role of support person. Inadequate levels of financial assistance and/or housing subsidies often make it impossible for persons with disabilities to obtain adequate housing and significantly increase the risk of homelessness.

53. Governments have obligations to remove not only physical but also financial and legal barriers to access to adequate housing for persons with disabilities. They must ensure the affordability of rents, utilities and other essential services, by providing the necessary financial assistance, such as through rental subsidies, and addressing barriers relating to rental contracts and access to loans.[49]

3. Availability of services

54. The availability of services is essential to independent living and agency over where and how to live in the community. Access to water and sanitation is a priority issue for many persons with disabilities.[50] In addition to the core services identified in general comment No. 4, States must ensure that persons with disabilities have access to a diverse range of services linked to living autonomously, as articulated in article 19 of the Convention, including in-home, residential and community support services.[51] Services should be matters of free choice for persons with disabilities, not linked to security of tenure or residency.

4. Habitability

55. Standards of habitability vary considerably with different impairments and must respond to both the physical and the social dimensions of housing. Persons with disabilities may find it difficult to build habitable homes in informal settlements and face challenges in relation to maintenance and repair. Protection against violence or abuse is also critical to ensuring habitability for persons with disabilities. Physical modifications may be required to ensure habitability, such as sound-proofing of apartments for persons with autism.

5. Location

56. Persons with disabilities frequently have critical needs in relation to the location of housing in order to ensure access to work, accessible transportation, support services and health-care facilities. Patterns of displacement of low-income communities to the peripheries of cities have disproportionately affected persons

[47] Committee on Economic, Social and Cultural Rights, general comment No. 7, para. 16; Basic principles and guidelines on development based evictions and displacement, A/HRC/4/18, annex I, paras. 32-33.

[48] Guiding principles on security of tenure for urban poor, A/HRC/25/54, para. 29.

[49] A/71/314, para. 13.

[50] UNICEF, "Good practices in the provision of accessible and inclusive WASH services — UNICEF country offices" (2015).

[51] A/HRC/28/37, para. 32.

with disabilities. Such displacement and isolation are contrary to the right to housing and other human rights of persons with disabilities.

6. Cultural adequacy

57. Cultural identity and expression are key to self-realization and inclusion in communities for many persons with disabilities. All the components of adequate housing identified above must be understood in the context of the right to culturally adequate housing. Accessible housing constructed on the basis of "universal" barrier-free design, for example, must respect diverse cultural identities.

58. States have an obligation to provide housing in a manner that allows persons with disabilities to express their cultural identity and participate meaningfully in the development of culture within their communities.

V. Claiming the right to housing of persons with disabilities

59. The significant potential of the disability human rights paradigm to advance the realization of the right to housing has not yet been fully tested in courts. Courts and human rights bodies have been reluctant to engage with the positive obligation of States to address systemic violations of the right to adequate housing experienced by persons with disabilities.

60. In only one communication considered under the Optional Protocol to the Convention on the Rights of Persons with Disabilities has a violation of article 28 been alleged. In the case of *H.M. v. Sweden*, a municipality refused to grant an exception to a development plan to allow the claimant to build a hydrotherapy pool required for the treatment of her health condition. Having found that the refusal of reasonable accommodation violated the claimant's right to non-discrimination, as well as her rights under article 19, the Committee declined to decide whether that denial also violated article 28.[52] It is noteworthy, however, that the Committee extended the remedy beyond the author's individual circumstances, recommending that the State party ensure that "its legislation and the manner in which it is applied by domestic courts is consistent with the State party's obligations under the Convention".[53] This is an example of the manner in which reasonable accommodation claims can give rise to individual as well as systemic and/or legislative remedies.

61. Under its inquiry procedure, the Committee responded to concerns about violations of the right to adequate housing raised by persons with disabilities in the United Kingdom of Great Britain and Northern Ireland and by the previous mandate holder after her mission. The Committee documented the extremely punitive and damaging effects of austerity measures, including the removal of the spare-room subsidy and a reduction of the housing benefit for working-age social housing tenants.[54] In Scotland, the reform affected 82,000 households, 80 per cent of which were households with adults with disabilities. The Committee concluded that the impact of those measures constituted "grave or systematic violations" of the rights of tenants of social housing with disabilities, including the rights to reasonable accommodation and non-discrimination, to independent living and being included in the community, to an adequate standard of living, including adequate housing, to social protection and to employment.[55]

[52] See, for example, communication No. 3/2011, *H.M. v. Sweden*.
[53] Ibid., para. 9.
[54] A/HRC/25/54/Add.2, paras. 46-51.
[55] CRPD/C/15/R.2/Rev.1, para. 113.

62. The most substantive remedies with respect to the right to adequate housing of persons with disabilities have tended to emerge from claims relating to deinstitutionalization and forced evictions. In the decision of the Supreme Court of the United States in *Olmstead v. L.C.*,[56] the Court recognized that States had an obligation, pursuant to the Americans with Disabilities Act, to take reasonable measures to ensure that persons with psychosocial disabilities were able to live outside institutions in the least restrictive environment, with a waiting list for services that moved at a "reasonable" pace. The federal Government, through the Department of Housing Urban Development, has provided guidelines and support to states to encourage the implementation of the decision. In another case under the Act, an appeals court ordered a private landlord to be flexible with respect to employment and income qualifications for rental housing, recognizing their exclusionary effect on persons with disabilities.[57]

63. In *Purohit and Moore v. the Gambia*, the African Commission on Human and Peoples' Rights considered a case of forcible institutionalization without due process in the Gambia. The Commission not only found that the legislation itself violated provisions of the African Charter on Human and Peoples' Rights, but also took note of the obligation to progressively realize the right to health by addressing violations of socioeconomic rights. The Commission stated that, throughout Africa, poverty rendered persons "incapable to provide the necessary amenities, infrastructure and resources that facilitate the full enjoyment of [the right to health]" and read into the right to health the obligation of States parties to the African Charter "to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realized in all its aspects without discrimination of any kind".[58]

64. Through a number of cases, South African courts have played a leading role in establishing that, in order to meet a test of being "just and equitable", evictions must not be permitted to render persons homeless, with particular attention to person with disabilities.[59]

65. In India, the High Court of Bombay has applied the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act to require increased allocations of land (tenements) to persons with disabilities.[60] In a similar vein, the Supreme Court of Argentina, in a case involving a homeless mother and her son with a disability, stated that there should be a minimum guarantee of access to housing for those facing situations of vulnerability because of disability and ordered the immediate provision of shelter.[61]

66. In a decision adopted in 2008, the Supreme Court of Nepal ordered the release of all persons who were imprisoned because of psychosocial disabilities, in keeping with the right to equality, health and a dignified life. The Court directed the

[56] *Olmstead v. L.C.*, 527 U.S. 581 (1999).

[57] See *Giebeler v. M & B Associates*, 343 F.3d 1143 (9th Cir. 2003).

[58] *Purohit and Moore v. the Gambia*, African Commission on Human and Peoples' Rights, communication No. 241/2001 (2003), para. 84.

[59] See *Pitje v. Shibambo and Others* (case No. CCT144/15) [2016] ZACC 5; 2016 (4) BCLR 460 (CC), available from www.saflii.org/za/cases/ZACC/2016/5.html; *Arendse v. Arendse and Others* (case No. 12659/2009) [2012] ZAWCHC 156; [2012] 4 All SA 305 (WCC), available from www.saflii.org/za/cases/ZAWCHC/2012/156.html.

[60] See *India Centre for Human Rights and Law and Ors v. State of Maharashtra and Ors. and Bapu Trust for Research on Mind and Discourse*, 905-pil-44-09 (2009).

[61] See Supreme Court of Argentina, *Q.C., S.Y. c/ GCBA* s/ amparo (Q.C., S.Y. v. Government of the City of Buenos Aires, petition for *amparo*), 24 April 2012. See Public Defence Service of Buenos Aires, "Economic, social and cultural rights in the city of Buenos Aires", October 2015, pp. 64-67.

Government to enact a law to protect the rights of persons with psychosocial disabilities and to arrange health services and other necessary measures.[62] Local and international organizations have continued to exert pressure on the Government to implement the Court's order in line with the Convention on the Rights of Persons with Disabilities. In a decision adopted in 2012, the Court ordered the Government to provide a monthly stipend, build shelters and appoint a social welfare worker in each district.[63]

67. Effective remedies for violations of the right to adequate housing must be provided wherever possible by interpreting and applying domestic law consistently with the right to housing of persons with disabilities under international human rights law.[64] The Committee on Economic, Social and Cultural Rights emphasized that "guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights".[65] Unfortunately, even in the wealthiest countries, where there are sufficient resources to ensure the right to housing of persons with disabilities, courts have failed to interpret domestic human rights guarantees of equality consistently with the Convention on the Rights of Persons with Disabilities and refused to apply such guarantees so as to hold Governments accountable for failures to address widespread homelessness and inadequate housing among persons with disabilities.[66]

VI. Housing legislation, policies and strategies for persons with disabilities

68. Human rights protection in housing for persons with disabilities varies considerably among States. A growing number of countries have expressly included the right to housing in their constitutions or human rights legislation, and many also enumerate disability as a prohibited ground of discrimination. Some countries rely on universal guarantees of equality and non-discrimination, which are extended to persons with disabilities. In other countries, however, non-discrimination laws regarding disability are written in the context of specific sectors, such as employment, but fail to include non-discrimination and the duty to provide reasonable accommodation in the context of housing.[67]

69. Few States have developed rights-based strategies to address the housing circumstances of persons with disabilities within their jurisdiction, and even fewer have adopted a holistic and systemic approach. Many States continue to rely predominantly on charities and operate within an outdated charitable model in relation to disability. Where rights-based housing strategies and programmes have been developed, they are often not matched with commitments of funds or effective

[62] See *Sudharshan Subedi on behalf of the Nepal Disabled Human Rights Centre (DHRC) et al v. Council of Ministers*, 2063 B.S., writ No. 129, order date 16 October 2008.

[63] See Supreme Court of Nepal, Order No. 068-WO-0188, 14 August 2012. Available from http://dhrcnepal.org.np/wp-content/uploads/2016/09/Supreme-Court-Verdict-English.pdf.

[64] Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant, para. 3.

[65] Ibid., para 15.

[66] For example, *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852, para. 33; *Hotak v. London Borough of Southwark*, [2015] UKSC 30, para. 91.

[67] See Denmark, Act on the prohibition of discrimination on the labour market, No. 1349 of 2008; Council of the European Union, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Chile, Act establishing measures against discrimination, No. 20.609 of 2012.

implementation.[68] In other cases, policies may extend to provide support to accommodate physical impairments with respect to housing, but not psychosocial and intellectual disabilities.

70. Information provided by States to the Special Rapporteur for the present report indicates that progress is being made. Mexico reports that its Federal Law for the Inclusion of Persons with Disabilities of 2011 and its regulation of 2012 explicitly provide for the right to dignified housing (art. 18). The legislation also establishes the right to universal accessibility and housing (art. 16) and is complemented by initiatives and programmes that provide subsidies and lines of credit to make physical alterations to houses to enhance living conditions for persons with disabilities.[69]

71. The Constitution of Kenya of 2010 prohibits discrimination on the ground of disability, affirms a right to reasonable access to all places, including the built environment and housing, and provides for the right to accessible and adequate housing. In the national disability policy of Kenya, it is recognized that ownership of land, housing and property is a fundamental human right of persons with disabilities, essential to security, self-reliance and livelihood. Through the policy, it is sought to eliminate barriers to acquiring and owning land, housing and property, such as high costs and societal prejudices against the ownership and inheritance of land by persons with disabilities. In all housing schemes, it is required to reserve at least 5 per cent of accessible houses for persons with disabilities, and accessible design standards are applied. In addition, inclusive financial and credit services targeting persons with disabilities are promoted.

72. Under the National Disability Council Act of 2004 of Namibia, a council is established to monitor the implementation of a national policy on disability, including ensuring adequate allowances and pensions for persons with disabilities and developing and providing accessible housing through public schemes.[70]

73. Under the Persons with Disabilities Act (2012) of Zambia, an agency is established that coordinates consultation with organizations of persons with disabilities, State institutions and other civil society actors to integrate a disability perspective into national policies, plans and decision-making sectors, and that can make representations on behalf of or provide legal assistance to persons with disabilities in proceedings relating to the rights of persons with disabilities (art. 20 (2) (e)).

74. Finland reported that its framework for advancing the right to housing for persons with disabilities included: the constitutional protection of the right to housing; the provision of supportive housing and community-based support with a commitment to self-determination in the use of forms of support and services; funding for building and renovating housing to make it accessible and suitable; national action plans on homelessness; and a range of supervisory mechanisms, including an advisory board for the rights of persons with disabilities to oversee coordinated efforts.[71] Finland stated that it considered those currently living in institutions to be homeless and had set a deadline of 2020 to close all institutions, emphasizing the right to live in the community with access to the necessary services and forms of support.

[68] See the submissions for the present report by Inclusion Ireland and Profound Ireland.
[69] See the submission by Mexico for the present report.
[70] See the submission by Namibia for the present report and https://dredf.org/legal-advocacy/international-disability-rights/international-laws/namibia-national-disability-council-act/.
[71] See the submission by Finland for the present report.

75. In its recent white paper on the rights of persons with disabilities, the Department of Social Services of South Africa called for a comprehensive strategy to realize the right to adequate housing of persons with disabilities consistent with the transformative nature of the constitutional right to housing, including supported community living plans, subsidized housing support, universal design as a requirement in infrastructure grants and a sustainable community-based system for support for independent living.[72] In the white paper, emphasis was laid on the critical importance of strengthening the enforcement of existing legislation, improving access to courts, complaints mechanisms and institutions and strengthening the capacity of institutions such as the South African Human Rights Commission and of organizations for persons with disabilities to support persons with disabilities in gaining access to justice.[73]

76. A number of Governments appear to be working to ensure that both public and privately developed housing meets accessibility requirements. In Singapore, the Housing and Development Board has committed itself to ensuring that barrier-free housing is implemented across its public housing sector, in which 80 per cent of the population resides, including through measures such as increasing elevator availability, Braille signage and voice synthesizers.[74] In Brazil, in the Act on the Inclusion of Persons with Disabilities (2015), it is required that 3 per cent of publicly funded housing be available to persons with disabilities.

77. A number of jurisdictions have adopted a "housing first" model to address homelessness.[75] The model provides chronically homeless persons, in particular those with psychosocial impairments and/or drug or alcohol addictions, with long-term housing and the necessary forms of support.

78. A number of countries identified their national human rights institutions as having the jurisdiction to oversee the implementation of the right to housing for persons with disabilities, including Finland, Namibia and the Republic of Korea.[76]

79. Subnational and local governments have also initiated important efforts to address the right to adequate housing of persons with disabilities. Article XIV (1) of the World Charter for the Right to the City provides for universal realization of the right to housing and emphasizes the need for accessible and suitable locations. In article X of the Global Charter-Agenda for Human Rights in the City, it is recommended that cities adopt regulations to ensure the accessibility of housing for persons with disabilities. Some cities have sought to initiate inclusive zoning policies to prevent restrictions on supportive housing. Others have adopted measures to address affordability, such as housing benefits and/or allowances, grants or loans for required adaptations, lower interest rates on housing loans and reduced housing taxes for families with a family member with a disability.

VII. Conclusions and recommendations

80. **Few marginalized groups suffer such egregious violations of the right to housing as do persons with disabilities. Across the world, they are commonly homeless, institutionalized and subjected to cruel and inhuman treatment for**

[72] South Africa, Department of Social Development, "White paper on the rights of persons with disabilities", No. 230, 9 March 2016, pp. 89-91.

[73] Ibid., pp. 78-80.

[74] See Singapore, Housing and Development Board, "Towards a barrier-free environment in public housing". Available from www.bca.gov.sg/BarrierFree/others/HDB.pdf.

[75] See submissions from Finland, the European Federation of National Organisations on Working with the Homeless and the European Disability Forum for the present report.

[76] See the submissions of those countries for the present report.

no reason other than their disability. They endure isolation, stigmatization and discrimination in all aspects of housing, whether access, design or policy development and implementation. Their very lives are imperilled by housing and communities that are based on exclusion and uniformity rather than inclusion and diversity. Yet it is on the basis of those experiences and the claims to equal dignity and rights advanced by those affected that the disability human rights paradigm has emerged. This paradigm has the potential to breathe new life into the right to adequate housing because it underscores and amplifies the essence of that right, namely, having a place to live in dignity, it allows persons with disabilities to participate in their communities and it recognizes diversity as a strength that makes households and communities thrive.

81. If the immense potential of the integration of the disability rights paradigm with the right to housing is to be realized, States and other actors will have to make a fundamental shift in the way in which they think about and interact with the human rights of persons with disabilities.

82. In that regard, the Special Rapporteur offers the following recommendations:

(a) In consultation with persons with disabilities and their organizations, States should:

(i) Prioritize and recognize in domestic law the obligation to realize the right to housing of persons with disabilities to the maximum of available resources, tying this legal obligation to the commitment to ensure adequate housing for all by 2030, in accordance with target 11.1 of the Sustainable Development Goals;

(ii) Ensure that non-discrimination provisions are based on substantive equality, recognizing positive obligations to address the systemic inequality in housing experienced by persons with disabilities;

(iii) Ensure that all persons with disabilities are able to live free from institutionalization and that access to adequate housing, the requisite services and appropriately trained support is provided in the community;

(iv) Ensure access to justice and effective accountability mechanisms for claims to the right to adequate housing by persons with disabilities, including when States have failed to adopt reasonable programmatic measures to realize the right;

(v) Adopt a clear policy framework for the inclusion of all persons with disabilities in all areas of housing policy and design, ensuring that those living in poverty or homelessness, women, ethnic, religious or linguistic minorities, indigenous peoples, migrants and both young and older persons are fully included;

(vi) Design and implement both qualitative and quantitative data collection about the housing circumstances of persons with disabilities, disaggregated on the basis of the standard survey questions of the Washington Group on Disabilities;

(vii) Address homelessness among persons with disabilities on an urgent basis and prioritize measures to address the circumstances of those living in informal settlements and homeless encampments;

(viii) **Ensure that security of tenure and other legal protection in housing are developed and applied in a manner that recognizes the distinctive needs of persons with disabilities;**

(ix) **Ensure that the obligation of reasonable accommodation for persons with disabilities is applied to public and private housing providers, financial actors and all aspects of the housing environment;**

(x) **Ensure that all persons with disabilities can exercise their right to legal capacity in any issue relating to the right to adequate housing, including to have access to and sign contracts for credit and leases;**

(xi) **Ensure that the necessary support is provided to organizations of persons with disabilities to facilitate effective participation in all areas of housing policy and decision-making;**

(xii) **Establish an independent budgetary review mechanism to ensure that budget allocations for housing and related forms of support are consistent with the "maximum of available resources" standard;**

(xiii) **Provide adequate financial and other support to persons with disabilities in a manner that ensures choice as to where to live and how support will be provided and that covers the full cost of housing and related expenses;**

(xiv) **Adopt accessibility requirements that apply to new housing and implement a clear time frame for ensuring accessibility within existing housing stock;**

(xv) **Ensure that refugees, internally displaced persons and migrants with disabilities enjoy their right to adequate housing, notably by including the relevant international human rights provisions in the forthcoming global compact on refugees and the global compact for safe, orderly and regular migration;**

(xvi) **Ensure that local governments implement and adhere to the right to housing in all municipal action, including urban planning, zoning, planning of transportation and the production and maintenance of housing;**

(b) **Courts, tribunals and national human rights institutions should:**

(i) **Interpret and apply domestic law in accordance with the right to adequate housing of persons with disabilities and in particular recognize that the rights to life, liberty, substantive equality and non-discrimination require Governments to address homelessness, provide support for living in the community and respond to the diverse housing needs of persons with disabilities;**

(ii) **Ensure access to justice and effective accountability for all aspects of State obligations with respect to the right to housing of persons with disabilities, including budgetary allocations and the effectiveness of strategies and programmes;**

(c) **Civil society and organizations of persons with disabilities should take forward or support legal challenges to structural violations of the right to housing of persons with disabilities and seek systemic remedies.**